JOINT APPENDIX

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1701

UNITED STATES OF AMERICA, APPELLANT,

v.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT FILED MAY 13, 1974
PROBABLE JURISDICTION NOTED OCTOBER 15, 1974

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INDEX

	Page
Relevant Docket Entries	1
Complaint by the United States filed February 21, 1973	3
Answer of National Association of Securities Dealers, Inc., filed March 26, 1973	21
Answer of Massachusetts Investors Growth Stock Fund, filed March 26, 1973	25
Answer of Crosby Corporation and Fidelity Fund, Inc., filed March 26, 1973	29
Answer of Wellington Fund, Inc., filed March 26, 1973	39
Answer of Vance, Sanders & Co., Inc., filed March 26, 1973	57
Answer of Wellington Management Co., filed March 26, 1973	70
Answer of Bache & Co., et al., filed March 26, 1973	88
Motion of National Association of Securities Dealers, Inc. to Dismiss, filed May 29, 1973	116
Notice of Motion of Massachusetts Investment Growth Stock Fund, Inc. to Dismiss with supporting affidavits of John Barnard, Jr. and Thomas Otis and exhibits, filed May 29, 1973	117
Motions of Fidelity Fund, Inc. and Crosby Corp. to Dismiss, with supporting affidavit of Caleb Loring, Jr., filed May 29, 1973	153

INDEX (Continued)

	Page
Motion of Vance, Sanders & Co., Inc. to Dismiss, filed May 29, 1973	225
Motion of Wellington Management Co. and Wellington Fund, Inc. to Dismiss, filed May 29, 1973	227
Motion of Bache & Co., et al., to Dismiss, filed May 29, 1973	228
Affidavit of Daniel R. Hunter, filed July 5, 1973	230
Government Exhibits:	
GX-1	233
GX-2	238
GX-3	241
GX-4	243
GX-5	246
GX-6	251
GX-7	253
GX-8	254
GX-9	255
GX-10	256
GX-11	258
GX-12	263
GX-13	267
GX-14	268
GX-15	272
GX-16	274
GX-17	276
GX-18	278
GX-19	280
GX-20	281
GX-21	288
GX-22	289
GX-23	291
GX-24	294
GX-25	295
GX-26	296
GX-27	298
GX-28	299
GX-29	301
GX-30	302
GX A-1	306
Bache & Co. Exhibits A & B filed July 20, 1973	309
Letter of SEC General Counsel to District Court dated August 9, 1973	323

INDEX (Continued)

	Page
Letter of Appellant in reply to SEC General Counsel's letter dated August 20, 1973	327
Transcript of oral argument of August 3, 1973 [43], [57], [60], [74-76], [83-84]	328
Memorandum Opinion of Judge Corcoran dated December 14, 1973	333
Notice of Appeal to the Supreme Court by the United States Dated February 11, 1974	363
Order of the Supreme Court noting probable jurisdiction, dated October 15, 1974	364

Relevant Docket Entries

Date	
2/21/73	Complaint, appearance—#7 serv. 3-1; #5 serv. 3-5; #6 serv. 3-5; #4 serv. 3-1; #11, 12,13 serv. 2-23; #3 serv. 3-5; #15 serv. 3-1; #2 serv. 3-2; #1, #8, #9, #10, #14, #16 serv. 2/23.
3/26/73	Answer of deft. #2 to complaint. 3/m 3/26.
3/26/73	Answer of defts. 3 and 5 to complaint; exhibit A; c/m 3/26.
3/26/73	Answer of deft #1 to complaint; c/m 3/26.
3/26/73	Answer of deft #4 to complaint; c/m 3/26 Exhibit A & B.
3/26/73	Answer of deft #7 to complaint; exhibit A & B; c/m 3/26.
3/26/73	Answer of defts 8,9,10,11,12,13,14,15 and 16 to complaint; exhibit A, B and C; c/m 3/26.
3/27/73	Answer of deft. #6 to complaint. Attachments (2); c/m 3/26.
5/29/73	Motion of deft #6 to dismiss; affidavit; P & A; table of contents; table of authorities; memorandum; c/m 5/29/73.
5/29/73	Motions of defts 8,9,10,11,12,13,14,15 and 16 to dismiss; c/m 5/29/73
5/29/73	Motion of defts 4 and 7 to dismiss; P & A; c/m 5/29/73
5/29/73	Notice by deft. #2 of motion to dismiss; affidavit of John Barnard, Jr. exhibit A,B,C,D; affidavit of Thomas Otis, exhibit A; statement; brief. c/m 5/29/73
5/29/73	Motion of deft. #1 to dismiss; P & A; c/m 5/29/73. appendix A-F.
5/30/73	Motion of defts 3 and 5 to dismiss; affidavit; P & A; c/m 5/29/73.

RELEVANT DOCKET ENTRIES—Continued

Date	
8/3/73	MOTIONS to dismiss on issues of Investors Co. Act 22(d), 22(f) jurisdiction argued and taken under advisement. (Rep: Doyne Spencer) Corcoran, J.
9/11/73	TRANSCRIPT of proceedings, August 3, 1973, Rep: Doyne Spencer; Court's copy (Filed in C.A. 2454-72)
12/14/73	ORDER dismissing cause.
12/14/73	MEMORANDUM OPINION. (N) (Filed in CA 2454-72)
2/11/74	NOTICE of Appeal by pltf. to the Supreme Court of the U.S. from Judgment of 12/14/74; c/m 2/11/74.

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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, PLAINTIFF, v. THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.; MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.; FIDELITY FUND, INC.; WELLINGTON FUND, INC.; THE CROSBY CORPORATION; VANCE, SANDERS & COMPANY, INC.; THE WELLINGTON MANAGEMENT COMPANY, INC.; MERRILL LYNCH, PIERCE FENNER & SMITH, INC.; BACHE & COMPANY, INC.; REYNOLDS SECURITIES CORPORATION; F. I. DUPONT, GLORE FORGAN, INC.; E. F. HUTTON, INC.; WALSTON & COMPANY, INC.; DEAN WITTER & COMPANY, INC.; PAINE, WEBBER, JACKSON & CURTIS, INC.; HORNBLOWER & WEEKS-HEMPHILL, NOYES, INC., DEFENDANTS.	Civil Action No. 338-73 Filed: Feb. 21, 1973 Antitrust Equitable Relief Sought

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants, and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890 (15 U.S.C. § 4), as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act.

2. Each of the defendants in each of the Counts hereinafter alleged, except Fidelity Fund, Inc., Massachusetts Investors Growth Stock Fund, Inc., and Wellington Fund, Inc., transacts business or is found within the District of Columbia.

II

Definitions

3. As used herein:

(a) "mutual fund" means an open-end management investment company as that term is defined in the Investment Company Act of 1940 (15 U.S.C. § 80a-(3), (4), and (5));

(b) "principal underwriter" means a principal underwriter of a mutual fund as that term is defined in the Investment Company Act of 1940 (15 U.S.C. § 80a-2(29);

(c) "broker/dealer" means a securities broker/dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. § 78o);

(d) "brokerage transaction" means a securities transaction executed by a broker/dealer as agent for the account of others;

(e) "dealer transaction" means a securities transaction executed by a broker/dealer as principal for its own account;

(f) "primary distribution system" means the purchase of mutual fund shares by an investor through (1) a broker/dealer which has a sales agreement with the principal underwriter, (2) the principal underwriter, and (3) the mutual fund;

(g) "secondary dealer market" means an interdealer market in mutual fund shares and a market in which any dealer can purchase mutual fund shares from investors at more than the redemption price; and

(h) "brokerage market" means the transfer, by means of a brokerage transaction, of already issued and outstanding mutual fund shares between investors, acting through broker/dealers.

Count I

I

Defendants

4. The Crosby Corporation (hereinafter "Crosby"), a corporation organized under the laws of the State of Delaware and having its principal place of business in Boston, Massachusetts is made a defendant herein. Crosby is the principal underwriter of the following mutual funds, hereinafter collectively called the Fidelity Funds:

Everest Fund, Inc.
Fidelity Trend Fund, Inc.
Fidelity Capital Fund, Inc.
Fidelity Fund, Inc.
Essex Fund, Inc.
Salem Fund, Inc.
Puritan Fund, Inc.
Fidelity Bond Debenture Fund

The Fidelity Funds have combined net assets in excess of $3.4 billion.

5. Vance, Sanders & Company (hereinafter "Vance, Sanders"), a corporation organized under the laws of the State of Maryland and having its principal place of business in Boston, Massachusetts, is made a defendant herein. Vance, Sanders is the principal underwriter of the following mutual funds, hereinafter collectively called the Vance, Sanders Funds:

Vance, Sanders Special Fund
Massachusetts Investors Growth Stock Fund
Massachusetts Investors Trust
Century Shares Trust
Boston Common Stock Fund
Boston Fund
Massachusetts Income Development
Massachusetts Capital Development Fund
Massachusetts Financial Development Fund

The Vance, Sanders Funds have combined net assets in excess of $3.7 billion.

6. The Wellington Management Company (hereinafter "Wellington"), a corporation organized under the laws of the State of Delaware and having its principal place of business in Philadelphia, Pennsylvania, is made a defendant herein. Wellington is the principal underwriter of the following mutual funds, hereinafter collectively called the Wellington Funds:

W. L. Morgan Growth Fund, Inc.
Explorer Fund, Inc.
Ivest Fund, Inc.
Trustees Equity Fund, Inc.
Windsor Fund, Inc.
Wellington Fund, Inc.
Wellesley Income Fund

The Wellington Funds have combined net assets in excess of $2.2 billion.

7. The following broker/dealers, each of which is a corporation, and which hereinafter are called collectively "defendant broker/dealers," are made defendants herein:

Broker/Dealer	Principal Office
Merrill Lynch, Pierce Fenner & Smith, Inc.	New York, New York
Bache & Company, Inc.	New York, New York
Reynolds Securities Corporation	New York, New York
F. I. duPont, Glore Forgan, Inc.	New York, New York
E. F. Hutton, Inc.	New York, New York
Walston & Company, Inc.	New York, New York
Dean Witter & Company, Inc.	San Francisco, California

Broker/Dealer	Principal Office
Paine, Webber, Jackson & Curtis, Inc.	New York, New York
Hornblower & Weeks-Hemphill, Noyes, Inc.	New York, New York

8. The National Association of Securities Dealers, Inc. (hereinafter "NASD"), an incorporated association of broker/dealers registered under the Securities Exchange Act of 1934 (15 U.S.C. 78o-3), and having its principal place of business in Washington, District of Columbia, is made a defendant herein. More than 4400 broker/dealers and principal underwriters are members of the NASD. Each of defendant principal underwriters and defendant broker/dealers is a member of the NASD.

II

Trade and Commerce

9. Mutual funds are investment management companies which invest in securities of other corporations and issue shares representing interests in the assets of the mutual fund. Shares of the mutual fund are continuously issued and redeemed by the mutual fund. Numerous mutual funds distribute their shares through a principal underwriter which generally has the exclusive contractual right to distribute shares of the mutual fund. Many principal underwriters enter into sales agreements with broker/dealers which then sell the mutual fund shares to investors. Shares are usually redeemed either through the primary distribution system or are sent directly to the mutual fund or an agent of the fund for repurchase or redemption. Mutual funds are required by law to redeem their shares on demand. There is a constant flow of the purchase, sale, and redemption of mutual fund shares in interstate commerce distributed by principal underwriters, including defendant principal underwriters, and sold to investors by broker/dealers, including defendant broker/dealers. More than 2100 broker/dealer and principal underwriter members of defendant NASD throughout the United States distribute mutual fund shares.

10. During 1971 shares of mutual funds valued at more than $5.1 billion were sold in the United States and mutual fund shares valued at more than $5.0 billion were redeemed.

From 1940 to 1971 the total assets of mutual funds in the United States increased from less than $1 billion to more than $55 billion and the number of mutual fund shareholder accounts increased from 300,000 to nearly 11 million. As estimated 8.5 million individuals and more than 260,000 institutions, such as pension and profit sharing funds, colleges, churches, hospitals, and social and labor organizations, own mutual fund shares. Individual mutual fund investors tend to be small investors, the average mutual fund transaction amounting to $2,900.

11. Mutual fund shares are sold at a public offering price described in the mutual fund prospectus which is based on the net asset value of the fund plus a sales load (commission). The sales load, in most cases, is 7½ percent-8½ percent of the offering price, depending upon the amount of the purchase and the rates set by the individual mutual fund. Lower rates usually apply on larger purchases. Mutual funds generally redeem their outstanding shares at their current net asset value.

12. When a mutual fund share is sold the principal underwriter retains a portion of the sales load, generally 1-1½ percent and the broker/dealer retains the remainder. During 1971, approximately $240 million in mutual fund sales loads were charged to investors in the United States. During 1970, sales load charges on mutual fund shares distributed by defendant principal underwriters amounted to more than $32 million, of which defendant broker/dealers received in excess of $8 million.

13. Section 22(d) of the Investment Company Act of 1940 (15 U.S.C. § 80a-22(d)) provides that a broker/dealer engaged in a dealer transaction in mutual fund shares must sell the mutual fund share at the current public offering price described in the prospectus unless the sale is to another dealer, the principal underwriter or the mutual fund.

14. A broker/dealer is authorized by the securities laws to engage in both brokerage transactions and dealer transactions. Section 22(d) of the Investment Company Act of 1940 applies only to dealer transactions. Thus, when a broker/dealer executes a brokerage transaction between two investors, or when two broker/dealers, one acting for the purchasing investor and one acting for the selling investor, execute a brokerage transaction in mutual fund

shares, the public offering price need not be maintained. In such a situation the broker/dealer is not prohibited by the Investment Company Act from independently establishing the commission for the transaction.

III

Violation Alleged

15. For many years, up to and including the date of filing of this complaint, defendant NASD and the members of defendant NASD, including defendant broker/dealers and defendant principal underwriters, have entered into and maintained a combination and conspiracy among themselves in restraint of the aforesaid trade and commerce in the purchase and sale of mutual fund shares in violation of Section 1 of the Sherman Act.

16. The aforesaid combination and conspiracy has consisted of a continuing understanding and concert of action, the substantial terms of which have been, and are, to prevent the growth of a secondary dealer market and a brokerage market in the purchase and sale of mutual fund shares.

17. In effectuating said combination and conspiracy NASD and the members of the NASD have done the following things, among others:

(a) established and maintained rules which inhibited the development of a secondary dealer market and a brokerage market in mutual fund shares;

(b) established and maintained rules which induced broker/dealers to enter into sales agreements with principal underwriters, with knowledge that sales agreements contained restrictive provisions which inhibited the development of a secondary dealer market and brokerage market in mutual fund shares;

(c) induced member principal underwriters to include restrictive provisions in their sales agreements;

(d) discouraged persons who made inquiry about the legality of a brokerage market from participating in a brokerage market and distributed misleading information to its members concerning the legality of a brokerage market in mutual fund shares; and

(e) suppressed market quotations for the secondary dealer market.

18. The unlawful combination and conspiracy hereinbefore alleged has had the following effects, among others:

(a) sales of mutual fund shares have been confined to a primary distribution system and the growth and development of a secondary dealer market and a brokerage market in mutual fund shares has been inhibited; and

(b) the public has been deprived of the benefits of free and open competition in a secondary dealer market and a brokerage market in mutual fund shares.

Count II

I

Defendants

19. Crosby, as described in paragraph 4 hereof, is made a defendant herein.

20. Each of defendant broker/dealers, as described in paragraph 7 hereof, is made a defendant herein.

II

Trade and Commerce

21. Paragraphs 9 through 14 hereof are realleged in full.

III

Violation Alleged

22. For many years up to and including the date of the filing of this complaint, defendant Crosby has entered intc and maintained contracts, and combinations with each defendant broker/dealer, and other broker/dealers, in unreasonable restraint of the aforesaid trade and commerce in the purchase and sale of mutual fund shares in violation of Section 1 of the Sherman Act.

23. The aforesaid contracts and combinations have consisted of continuing understandings and agreements, the substantial terms of which have been, and are, that:

(a) each broker/dealer must maintain the public offering price in any brokerage transaction in which it participates involving the purchase or sale of shares of the Fidelity Funds; and

(b) each broker/dealer must sell shares of the Fidelity

Funds only to investors or the fund and purchase such shares only from investors or the fund.

24. The effects of the aforesaid unlawful contracts and combinations have been, and are, among others, that:

(a) the price of brokerage transactions in shares of the Fidelity Funds has been fixed and maintained at artificial and noncompetitive levels;

(b) the purchase and sale of shares of the Fidelity Funds has been confined to a primary distribution system and the growth and development of a secondary dealer market and a brokerage market in the purchase and sale of such shares has been inhibited;

(c) the public has been deprived of the benefits of free and open competition in the purchase and sale of shares of the Fidelity Funds by means of brokerage transactions; and

(d) broker/dealers with whom Crosby does not have sales agreements have been deprived of opportunities to purchase and sell shares of the Fidelity Funds.

Count III

I

Defendants

25. Fidelity Fund, Inc., a mutual fund organized under the laws of the State of Massachusetts, is made a defendant herein. Fidelity Fund, Inc., has net assets of $1.86 billion and in 1970 issues shares having a value of $40 million.

26. Crosby, as described in paragraph 4 hereof, is made a defendant herein.

II

Trade and Commerce

27. Paragraphs 9 through 14 hereof are realleged in full.

III

Violation Alleged

28. For many years up to and including the date of the filing of this complaint, defendant Crosby has entered into and maintained contracts and combinations with each of the

Fidelity Funds, including defendant Fidelity Fund, Inc., in unreasonable restraint of the aforesaid trade and commerce in mutual fund shares in violation of Section 1 of the Sherman Act.

29. The aforesaid contracts and combinations have consisted of continuing understandings and agreements, the substantial terms of which have been and are, that the dealer agreements entered into between Crosby and broker/dealers would contain the restrictions set forth in paragraph 23(a) and 23(b) hereof.

30. The effects of the aforesaid unlawful contracts and combinations have been and are, among others, that:

(a) the price of brokerage transactions in shares of the Fidelity Funds has been fixed and maintained at artificial and noncompetitive levels;

(b) the purchase and sale of shares of the Fidelity Funds has been confined to a primary distribution system and the growth and development of a secondary dealer market and a brokerage market in the purchase and sale of such shares has been inhibited;

(c) the public has been deprived of the benefits of free and open competition in the purchase and sale of shares of the Fidelity Funds by means of brokerage transactions; and

(d) broker/dealers with whom Crosby does not have sales agreements have been deprived of opportunities to purchase and sell shares of the Fidelity Funds.

Count IV

I

Defendants

31. Vance, Sanders, as described in paragraph 5 hereof, is made a defendant herein.

32. Each of defendant broker/dealers, as described in paragraph 7 hereof, is made a defendant herein.

II

Trade and Commerce

33. Paragraphs 9 through 14 hereof are realleged in full.

III

Violation Alleged

34. For many years, up to and including the date of the filing of this complaint, defendant Vance, Sanders has entered into and maintained contracts and combinations with each defendant broker/dealer, and other broker/dealers, in unreasonable restraint of the aforesaid trade and commerce in the purchase and sale of mutual fund shares in violation of Section 1 of the Sherman Act.

35. The aforesaid contracts and combinations have consisted of continuing understandings and agreements, the substantial terms of which have been and are, that:

(a) in all sales of shares of the Vance, Sanders F'unds to the public, the broker/dealer would act as dealer for its own account; and

(b) the broker/dealer would not purchase shares of Vance, Sanders Funds from other broker/dealers and would not sell such shares to other broker/dealers, or, in the alternative, would sell such shares to other broker/dealers only at the public offering price.

36. The effects of the aforesaid unlawful contracts and combinations have been and are, among others, that:

(a) the purchase and sale of Vance, Sanders Funds has been confined to a primary distribution system and the public has been deprived of the benefits of a secondary dealer market and a brokerage market in the purchase and sale of shares of the Vance, Sanders Funds; and

(b) broker/dealers with whom Vance, Sanders does not have sales agreements have been deprived of opportunities to purchase shares of the Vance, Sanders Funds, or, in the alternative, to purchase and sell shares of the Vance, Sanders Funds at competitive prices.

Count V

I

Defendants

37. Massachusetts Investors Growth Stock Fund ("MIG Fund"), a mutual fund organized under the laws of the State of Massachusetts, is made a defendant herein. MIG

Fund has net assets in excess of $1.2 billion and in 1970 issued shares having a value of $62 million.

38. Vance, Sanders, as described in paragraph 5 hereof, is made a defendant herein.

II

TRADE AND COMMERCE

39. Paragraphs 9 through 14 hereof are realleged in full.

III

VIOLATION ALLEGED

40. For many years, up to and including the date of the filing of this complaint, Vance, Sanders has entered into and maintained contracts and combinations with each of the Vance, Sanders Funds, including defendant MIG Fund, in unreasonable restraint of the aforesaid trade and commerce in the purchase and sale of mutual fund shares in violation of Section 1 of the Sherman Act.

41. The aforesaid contracts and combinations have consisted of a continuing understanding and agreement, the substantial terms of which have been and are, that in all sales of shares of the Vance, Sanders Funds to the public, Vance, Sanders would act as principal for its own account.

42. The effects of the aforesaid combinations and conspiracies have been and are, among others, that Vance, Sanders is prohibited from executing brokerage transactions in shares of the Vance, Sanders Funds, thereby depriving investors of a brokerage market in such shares.

COUNT VI

I

DEFENDANTS

43. Wellington, as described in paragraph 6 hereof, is made a defendant herein.

44. Each of defendant broker/dealers, as described in paragraph 7 hereof, is made a defendant herein.

II

TRADE AND COMMERCE

45. Paragraphs 9 through 14 hereof are realleged in full.

III

VIOLATION ALLEGED

46. For many years up to and including the date of the filing of this complaint, Wellington has entered into and maintained contracts and combinations with each defendant broker/dealer, and other broker/dealers, in unreasonable restraint of the aforesaid trade and commerce in mutual fund shares in violation of Section 1 of the Sherman Act.

47. The aforesaid unlawful contracts and combinations have consisted of continuing agreements and understandings, the substantial terms of which have been and are, that:

(a) the broker/dealer must sell shares of the Wellington Funds only as principal, for its own account;

(b) the broker/dealer must not purchase shares of the Wellington Funds from other broker/dealers and must not sell such shares to other broker/dealers; and

(c) in all transactions involving Wellington and the broker/dealer, Wellington would act only as agent for the appropriate Wellington Fund.

48. The effects of the aforesaid unlawful contracts and combinations have been and are, among others, that:

(a) the purchase and sale of Wellington Funds has been confined to a primary distribution system and the public has been deprived of a secondary dealer market and a brokerage market in the purchase and sale of shares of the Wellington Fund; and

(b) broker/dealers with whom Wellington did not have sales agreements have been deprived of opportunities to purchase and sell shares of the Wellington Funds.

COUNT VII

I

DEFENDANTS

49. Wellington Fund, Inc., a mutual fund organized under the laws of the State of Delaware, is made a defendant herein. Wellington Fund, Inc., has assets in excess of $1.2 billion, and in 1971 issued shares having a value in excess of $33 million.

50. Wellington, as described in paragraph 6 hereof, is made a defendant herein.

II

TRADE AND COMMERCE

51. Paragraphs 9 through 14 hereof are realleged in full.

III

VIOLATION ALLEGED

52. For many years up to and including the date of the filing of this complaint, Wellington has entered into and maintained contracts and combinations with each of the Wellington Funds, including defendant Wellington Fund, Inc., in unreasonable restraint of the aforesaid trade and commerce in the purchase and sale of mutual fund shares in violation of Section 1 of the Sherman Act.

53. The aforesaid unlawful contracts and combinations have consisted of continuing understandings and agreements, the substantial terms of which have been and are, that:

(a) Wellington must forward all orders from investors or broker/dealers to the appropriate Wellington Fund for sale only at the public offering price; and

(b) Wellington would arrange for the purchase of shares only from the appropriate Wellington Funds.

54. The effects of the aforesaid unlawful contracts and combinations have been and are, that:

(a) the public has been deprived the benefits of a secondary dealer market and a brokerage market in the purchase and sale of shares of the Wellington Funds; and

(b) broker/dealers have been deprived of the benefits of free and open competition in a secondary dealer market in shares of the Wellington Funds.

COUNT VIII

I

DEFENDANTS

55. Each broker/dealer defendant, as described in paragraph 7 hereof, is made a defendant herein.

II

TRADE AND COMMERCE

56. Paragraphs 9 through 14 hereof are realleged in full.

III

VIOLATION ALLEGED

57. For many years, up to and including the date of filing of this complaint, each defendant broker/dealer has entered into and maintained contracts and combinations with numerous principal underwriters in addition to defendant principal underwriters, in unreasonable restraint of the aforesaid trade and commerce in the purchase and sale of mutual fund shares in violation of Section 1 of the Sherman Act.

58. The aforesaid unlawful contracts and combinations have consisted of continuing understandings and agreements, the substantial terms of which have been and are, that with respect to sales and purchases of shares of the funds distributed by the principal underwriter concerned, one or more of the following restrictions would be in effect:

(a) the broker/dealer must act as principal (dealer) only in the sale of such shares;

(b) if the broker/dealer acted as agent (broker) in the sale of such shares, it must maintain the public offering price;

(c) the broker/dealer must purchase such shares only from the principal underwriter, investors or the fund; and

(d) the broker/dealer must sell such shares only to the principal underwriter, investors, or the fund.

59. The effects of such unlawful contracts and combinations have been and are, among others, that:

(a) the public has been deprived of the benefits of competition in a secondary dealer market and a brokerage market in the purchase and sale of mutual fund shares; and

(b) the public has paid artificial and noncompetitive sales load charges for the purchase and sale of mutual fund shares.

PRAYER

WHEREFORE, plaintiff prays:

1. That the contracts, combinations and conspiracies alleged in Counts I through VIII hereof be adjudged and decreed to be unlawful and in violation of Section 1 of the Sherman Act.

2. That the defendants and each of their officers, directors, agents, managers, employees, successors, assigns, members, and all other persons acting or claiming to act on behalf of the defendants be perpetually enjoined and restrained from directly or indirectly continuing, maintaining, enforcing, or renewing the aforesaid contracts, combinations, and conspiracies and from engaging in any practices, contracts, combinations, or conspiracies having like or similar purposes or effects.

3. That the defendant mutual funds, principal underwriters and broker/dealers and their officers, directors, agents, representatives, and all persons acting or claiming to act on their behalf be perpetually enjoined from entering into or maintaining any agreement containing:

(a) any limitation or restriction as to (i) the persons from whom any registered broker/dealer may purchase, or to whom any registered broker/dealer may sell, mutual fund shares (ii) a registered broker/dealer's right to act as broker in the purchase or sale of mutual fund shares; or

(b) any requirement as to the number of mutual fund shares that must be purchased from, or redeemed, liquidated or repurchased through, the mutual fund or its principal underwriter.

4. That each defendant mutual fund be required prominently to display in its prospectus a statement that shares of the fund may legally be purchased at less than the public offering price and sold at more than the redemption price if a broker/dealer acts as broker for another investor rather than dealer in the transaction.

5. That each defendant broker/dealer be required to inform prospective customers that mutual fund shares may legally be purchased for less than the public offering price if the broker/dealer agrees to act as agent rather than principal.

6. That defendant NASD and each of its officers, governors, agents, managers, employees, successors, assigns, and all other persons acting or claiming to act on behalf of the defendant NASD be perpetually enjoined from establishing, maintaining, or adhering to any rule or regulation, formal or informal, or suggesting any course of action for its members, which:

(a) requires or induces any member (i) to enter into any agreement or course of action enjoined by other paragraphs of this Prayer for Relief, (ii) to act as principal in the purchase or sale of mutual fund shares, or (iii) to refrain from purchasing mutual fund shares from, or from selling such shares to, any other broker/dealer;

(b) fixes the price for a brokerage transaction in mutual fund shares; or

(c) otherwise unreasonably impedes a secondary dealer market or a brokerage market in mutual fund shares.

7. That defendant NASD be required to display in all manuals, training guides and other literature distributed to members relating to the sale of investment company shares, a statement that any member broker/dealer, including any member principal underwriter which is also registered as a broker/dealer, is legally free to arrange for the purchase and sale of mutual fund shares at less than the public offering price by acting as broker between two customers.

8. That pursuant to Section 5 of the Sherman Act an order he made and entered herein requiring defendants Fidelity Fund, Inc., Massachusetts Investors Growth Stock Fund, Inc., and Wellington Fund, Inc., to be brought before this Court in this proceeding and directing the United States Marshals of the appropriate Districts to serve a summons on each of such defendants.

9. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

10. That plaintiff recover its taxable costs.

/s/ Richard G. Kleindienst
RICHARD G. KLEINDIENST
Attorney General

/s/ Thomas E. Kauper
THOMAS E. KAUPER
Assistant Attorney General

/s/ Baddia J. Rashid
BADDIA J. RASHID

/s/ Robert B. Hummel
ROBERT B. HUMMEL

/s/ Samuel Z. Gordon
SAMUEL Z. GORDON
Attorneys, Department of Justice

/s/ Harold H. Titus, Jr.
HAROLD H. TITUS, JR.
United States Attorney

/s/ Daniel R. Hunter
DANIEL R. HUNTER

/s/ Philip L. Verveer
PHILIP L. VERVEER

/s/ Ronald J. Silverman
RONALD J. SILVERMAN
Attorneys, Department of Justice

(Certificate of Service Omitted in Printing)

(Title Omitted in Printing)

ANSWER OF DEFENDANT NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Now comes Defendant NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., hereinafter referred to as "the Association," a corporation, through counsel, and states as and for its Answer to the Complaint:

First Defense

In specific answer to the allegations of the Complaint filed herein, Defendant Association states as follows:

1. Defendant Association denies each and every allegation contained in paragraph 1.

2. Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained in paragraph 2 except that it states that it may be found within the District of Columbia.

3. Defendant Association states that paragraph 3, including subparagraphs (a) through 3(h), constitute a statement of definitions selected or constructed by Plaintiff and are not capable of being either admitted or denied.

4. Defendant Association is without knowledge sufficient to either admit or deny the allegations contained in paragraphs 4 through 7.

5. Defendant Association admits the allegations contained in paragraph 8.

6. Defendant Association states that paragraphs 9 through 14 constitute statements incapable of being either admitted or denied or constitute allegations concerning which defendant Association does not have knowledge sufficient to either admit or deny.

7. Defendant Association denies each and every allegation contained in paragraph 15 through paragraph 18, including subparagraphs 17(a) through 17(e) and 18(a) and 18(b).

8. In answer to paragraph 19, Defendant Association reasserts the answer set forth hereinabove to paragraph 4.

9. In answer to paragraph 20, Defendant Association reasserts the answer set forth hereinabove to paragraph 7.

10. In answer to paragraph 21, Defendant Association

reasserts the answers set forth hereinabove to paragraphs 9 through 14.

11. In answer to paragraphs 22 through 24, including subparagraphs 23(a) and (b) and 24(a) through (d), Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

12. In answer to paragraphs 25 and 26, Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

13. In answer to paragraph 27, Defendant Association reasserts the answers set forth hereinabove to paragraphs 9 through 14.

14. In answer to paragraphs 28 through 30, including subparagraphs 30(a) through (d), Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

15. In answer to paragraphs 31 and 32, Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

16. In answer to paragraph 33 Defendant Association reasserts the answers set forth hereinabove to paragraphs 9 through 14.

17. In answer to paragraphs 34 through 36 including subparagraphs 35(a) and (b) and 36(a) and (b), Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

18. In answer to paragraphs 37 and 38, Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

19. In answer to paragraph 39, Defendant Association reasserts the answers set forth hereinabove to paragraphs 9 through 14.

20. In answer to paragraphs 40 through 42, Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

21. In answer to paragraphs 43 and 44, Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

22. In answer to paragraph 45, Defendant Association reasserts the answers set forth hereinabove to paragraphs 9 through 14.

23. In answer to paragraphs 46 through 48, including

subparagraphs 47(a) through (c) and 48(a) and (b), Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

24. In answer to paragraphs 49 and 50, Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

25. In answer to paragraph 51, Defendant Association reasserts the answers set forth hereinabove to paragraphs 9 through 14.

26. In answer to paragraphs 52 through 54, including subparagraphs 53(a) and (b) and 54(a) and (b), Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations set forth therein.

27. In answer to paragraph 55, Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations contained therein.

28. In answer to paragraph 56, Defendant Association reasserts the answers set forth hereinabove to paragraphs 9 through 14.

29. In answer to paragraphs 57 through 59, including subparagraphs 58(a) through (d) and 59(a) and (b), Defendant Association states that it is without knowledge sufficient to either admit or deny the allegations set forth therein.

Second Defense

The Complaint fails to state a cause of action as to Defendant Association upon which relief can be granted.

Third Defense

The Court does not have jurisdiction of the subject matter.

Fourth Defense

Defendant Association is exempted from application of the antitrust laws by the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a *et seq.*, generally, and by Section 15A(n) of that act, 15 U.S.C. § 78o-3(n), specifically.

Fifth Defense

The conduct alleged in the Complaint as to Defendant Association is exempted from application of the anti-trust laws by the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a *et seq.* and the Investment Company Act of 1940, as amended, 15 U.S.C. §§ 80a-1 through 80a-52.

Sixth Defense

Any action taken by Defendant Association in connection with any facts alleged in the Complaint was taken with the acquiescence, and under the active oversight, of the Securities and Exchange Commission pursuant to its responsibility as established by the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a *et seq.*

Seventh Defense

Primary and exclusive jurisdiction to adjudicate the allegations made against Defendant Association in the Complaint rests with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a *et seq.*, and the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 through 80a-52.

WHEREFORE, Defendant Association prays this Court:

1. To dismiss the Complaint filed herein and award costs to the Defendant Association, and
2. To grant such other relief as this Court may deem appropriate.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
Defendant

.....
Lloyd J. Derrickson
Senior Vice-President and
General Counsel

.....
Dennis C. Hensley
Assistant General Counsel

Dated: March 26, 1973

(Certificate of Service omitted in printing)

ANSWER OF DEFENDANT

MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.

(Title Omitted in Printing)

ANSWER

Defendant Massachusetts Investors Growth Stock Fund, Inc. ("MIGS"), by its attorneys, for its answer to Count V of the complaint herein:

1. Denies the allegations of paragraph 1 of the complaint except admits that plaintiff purports to bring this action under 15 U.S.C. § 4.
2. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 2 of the complaint except admits that it may not be found and does not transact business within the District of Columbia.
3. States that paragraph 3 of the complaint does not require an answer.
4. Denies the allegations of paragraph 37 of the complaint except admits and avers as follows: MIGS is a Massachusetts corporation and is an open-end, diversified investment company of the type commonly known as a "mutual fund." MIGS had net assets of approximately $1,634,718,730 on December 31, 1972. In fiscal 1972 MIGS issued shares having a net asset value of approximately $97,741,482 and redeemed or repurchased shares having a net asset value of approximately $102,060,568.
5. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 38 of the complaint except admits and avers that Vance, Sanders & Company, Inc., a Maryland corporation having its principal place of business in Boston, Massachusetts, is the principal underwriter of MIGS and that MIGS has given notice of the termination, effective June 30, 1973, of the underwriting agreement between it and Vance, Sanders & Company, Inc.
6. As an answer to paragraph 39 of the complaint:

(a) Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 9 of the complaint except admits and avers as follows: MIGS is an open-end diversified investment company as those terms are defined in sections 3 and 5 of the Investment Company Act of 1940, as amended. Said type of investment company is commonly known as a "mutual fund." MIGS continuously issues and stands ready to redeem its shares. MIGS currently distributes its shares through a principal under-

writer which has the exclusive contractual right, except in certain limited circumstances, to buy shares from MIGS. Shareholders of MIGS have the right to redeem their shares through MIGS' transfer agent and MIGS has also authorized its principal underwriter to act as its agent in repurchasing shares.

(b) Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 10 of the complaint.

(c) Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 11 of the complaint except admits and avers as follows: Shares of MIGS are sold to the public at a current offering price described in MIGS' prospectus. The public offering price is the net asset value prevailing at the time of purchase, plus a sales charge. The sales charge on MIGS' shares is 8½% of the offering price for purchases of less than $12,500, 7½% of the offering price for purchases of $12,500 but less than $25,000, 5¾% of the offering price for purchases of $25,000 but less than $50,000, 4% of the offering price for purchases of $50,000 but less than $100,000, 3¼% for purchases of $100,000 but less than $250,000, 2½% for purchases of $250,000 but less than $500,000, 2¼% for purchases of $500,000 but less than $1,000,000 and 1¾% for purchases of $1,000,000 or more. MIGS redeems its shares at net asset value.

(d) Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 12 of the complaint except admits and avers as follows: MIGS' principal underwriter, acting as principal, currently allows its dealers discounts from the applicable public offering price. On sales for which the maximum sales charge is applicable, the dealer retains 6½% and the principal underwriter retains 2% of the public offering price, except in the case of subsequent investments under the Lifetime Investing Account's Services for Accumulation.

(e) Denies the allegations of paragraph 13 of the complaint and refers to Section 22(d) of the Investment Company Act of 1940, as amended, for the terms thereof.

(f) Denies the allegation of paragraph 14 of the complaint.

7. Denies the allegations of paragraphs 40, 41 and 42 of the complaint.

First Affirmative Defense

8. As a first affirmative defense, alleges and avers that venue in this district is improper.

Second Affirmative Defense

9. As a second affirmative defense, alleges and avers that the transactions complained of are prescribed by, governed by and exempted from the antitrust laws by Section 22 of the Investment Company Act of 1940, as amended.

Third Affirmative Defense

10. As a third affirmative defense, alleges and avers that the transactions complained of are prescribed by, governed by and exempted from the antitrust laws by the Rules of Fair Practice and By-Laws of the National Association of Securities Dealers and Section 15A of the Securities Exchange Act of 1934.

Fourth Affirmative Defense

11. As a fourth affirmative defense, alleges and avers that primary jurisdiction over this matter rests in the Securities and Exchange Commission.

Fifth Affirmative Defense

12. As a fifth affirmative defense, alleges and avers that this action is barred by the doctrine of laches.

Sixth Affirmative Defense

13. As a sixth affirmative defense, alleges and avers that the complaint fails to state a claim upon which relief can be granted.

WHEREFORE, this defendant demands judgment dismissing the complaint and providing such other and different relief as to this Court may seem just and proper.

SULLIVAN & CROMWELL
By .....
(A Member of the Firm
48 Wall Street,
New York, New York 10005
(212) HAnover 2-8100

and

DAVIS R. ROBINSON

Davis R. Robinson
815 Connecticut Avenue, N.W.,
Washington, D.C. 20016
(212) 298-8020
Attorneys for Defendant
Massachusetts Investors Growth
Stock Fund, Inc.

DATED: March 26, 1973

(Certificate of service omitted in printing)

(Title Omitted in Printing)

ANSWER OF DEFENDANTS THE CROSBY CORPORATION AND FIDELITY FUND, INC.

Defendants The Crosby Corporation ("Crosby") and Fidelity Fund, Inc. ("Fidelity"), by their attorneys, answer the complaint as follows:

1. Admit that the complaint seeks relief for alleged violations of Section 1 of the Sherman Act as stated in paragraph 1 of the complaint.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the complaint, except admit that Fidelity does not transact business and is not found within the District of Columbia, and deny that Crosby transacts business or is found within the District of Columbia.

3. Admit the definitions contained in paragraph 3 of the complaint are those used within the complaint.

Answering Count I

4. Admit the allegations contained in paragraph 4 of the complaint, except deny that Crosby is at present acting as principal underwriter for Essex Fund, Inc.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 5, 6 and 7 of the complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint, except admit that Crosby is a member of defendant National Association of Securities Dealers.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the complaint, except admit the allegations contained in the first two sentences of paragraph 9 and that mutual funds are required by law to redeem their shares on demand.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the complaint.

9. Deny knowledge or information sufficient to form a

belief as to the truth of the allegations contained in paragraph 11 of the complaint, except admit that shares of "load" mutual funds are sold at a public offering price described in the fund's prospectus which is based on the net asset value of the fund plus a sales load.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the complaint.

11. Deny the allegations contained in paragraphs 13 and 14 of the complaint, and respectfully refer the Court to Section 22(d) of the Investment Company Act of 1940 for the provisions thereof.

12. Deny the allegations contained in paragraphs 15 through 18 of the complaint.

Answering Count II

13. The allegations contained in paragraphs 19 and 20 of the complaint do not require further answer.

14. With respect to paragraph 21 of the complaint, defendants repeat and reallege the admissions and denials set forth in this answer with respect to paragraphs 9 through 14 of the complaint as if here fully set forth.

15. Deny the allegations contained in paragraphs 22 and 23 of the complaint, and respectfully refer the Court to the standard dealer agreement between Crosby and broker/dealers distributing Fidelity shares, a copy of which is annexed hereto as Exhibit A, for the terms and conditions thereof.

16. Deny the allegations contained in paragraph 24 of the complaint.

Answering Count III

17. To the extent that paragraphs 25 and 26 require further answer, admit the allegations contained therein, except deny that Fidelity has assets of $1.86 billion.

18. With respect to paragraph 27 of the complaint, defendants repeat and reallege the admissions and denials set forth in this answer with respect to paragraphs 9 through 14 of the complaint as if here fully set forth.

19. Deny the allegations contained in paragraphs 28 through 30 of the complaint.

20. Counts IV through VIII assert no claim against defendants Crosby and Fidelity, and therefore no answer is required as to paragraphs 31 through 59.

First Defense

21. The complaint fails to state a claim upon which relief can be granted.

Second Defense

22. The Court does not have jurisdiction over the persons of defendants Crosby and Fidelity.

Third Defense

23. Each and every sales agreement between defendant Crosby and the defendant broker/dealers, a typical sample copy of which is annexed as Exhibit A, contains the following provisions, among others:

> "You agree not to purchase as principal or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the then currently effective applicable Fund prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us or the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction."

24. A true sample copy of the then existing sales agreements between defendant Crosby and defendant broker/dealers was and is an exhibit to and made a part of registration statements filed with the Securities and Exchange Commission ("Commission") in conection with the issuance, sale and distribution of shares in the load mutual funds included in the Fidelity Group of Funds, and particularly the shares of Fidelity, and in the event of any change in said agreements, a true copy of the new sales

agreement is filed with the Commission in accordance with its rules and regulations.

25. The sales agreements and practices of these defendants which are alleged in the complaint to be in violation of the Sherman Act were and are authorized by the Investment Company Act and by the Commission, and therefore are exempt from the operation of the Sherman Act.

Fourth Defense

26. The Investment Company Act vested the Commission with the exclusive power and authority to regulate and supervise continuously the investment company industry and the activities of those engaged therein, and to protect the public interest and especially the interests of investors in mutual funds against any and all evils and abuses arising from the agreements, practices or other activities of investment companies, investment advisors, dealers and broker/dealers, including methods employed in the issuance, distribution, sale, purchase, redemption and resale of the shares of open-end investment companies.

27. By reason of the foregoing, the agreements, transactions and practices alleged in the complaint to be in violation of the Sherman Act are exempt from the provisions of the Act.

Fifth Defense

28. By reason of the authority vested in the Commission under the Securities Exchange Act of 1934 and Investment Company Act of 1940, primary jurisdiction to regulate the agreements and activities complained of and to deal with any legal challenge to the practices and procedures connected with the distribution and sale of mutual fund shares rests with the Commission.

Prayer

WHEREFORE, defendants pray for judgment dismissing the complaint on the merits and awarding defendants the costs and disbursements of this action and reasonable counsel fees and such other and further relief as this Court deems just and proper.

Dated: March 26, 1973

/s/ Daniel P. Levitt
DANIEL P. LEVITT
Attorney for Defendants The Crosby Corporation and Fidelity Fund, Inc.

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Tel. No.: (212) 371-6000

SALES AGREEMENT

The Crosby Corporation,
Distributor
225 Franklin Street,
Boston, Mass. 02110
Executive Offices—
617-726-0400—Cable-
Crosfidel
Order Department—
617-742-5700—Teletype
710-321-0411

Fidelity Fund, Inc.
Fidelity Debenture Fund, Inc.
Fidelity Capital Fund, Inc.
Fideltiy Trend Fund, Inc.
Puritan Fund, Inc.
Salem Fund, Inc.
Everest Fund, Inc.

The Fidelity Group of Mutual Funds

November 1, 1972

Dear Sirs:

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders to you at the applicable public offering price computed as described in the applicable Fund's then currently effective Prospectus, less the Dealer Discount described below. The net asset value and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as follows (the percentage in each case being a percentage of the applicable public offering price):

	At least	But less than	Sales Charge Paid by Investor	Dealer Discount
On investments of	*	$ 10,000	8.5%	7.0%
On investments of	$ 10,000	20,000	8.0%	6.5%
On investments of	25,000	50,000	6.0%	4.8%
On investments of	50,000	100,000	4.5%	3.6%
On investments of	100,000	250,000	3.5%	2.8%
On investments of	250,000	500,000	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%
On investments over	1,000,000		1.0%	0.8%

* The minimum initial and subsequent investments must be as specified in the then currently effective applicable Fund Prospectus.

The schedule of sales charges and dealer discounts set forth above is applicable to purchases by "any person" (a) of a single Fund at any one time, or (b) in accordance with "Combined Purchase Privilege," "Cumulative Quantity Discount" and/or "Statement of Intention" as each of those terms is described in the then currently effective applicable Fund Prospectus. You must notify us of the total holdings, if applicable, of "any person" before he may avail himself of a reduced sales charge pursuant to the foregoing. Such notification, in writing, must be received by Crosby within four (4) business days of the placing of the order. An application form is available for this purpose. As used in this paragraph, "any person" means an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other like fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purpose of purchasing shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the applicable Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of confirmation you will pay promptly the net amount due as shown thereon. Payment should be made as follows:

The Crosby Corporation
Cash Clearing Department, 3rd Floor
Ten Post Office Square
Boston, Massachusetts 02109

FOR IDENTIFICATION PURPOSES ALL PAYMENTS AND TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100. WE RESERVE THE RIGHT TO HOLD YOU RESPONSIBLE FOR ANY LOSS WE MAY INCUR AS THE RESULT OF YOUR FAILURE TO MAKE ANY SUCH PAYMENTS.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the net asset value then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the then currently effective applicable Fund Prospectus), unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling to us for the account of an investor any shares of the appropriate Fund at the net asset value price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the dealer discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, as amended, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representations concerning the Funds other than those which are contained in the then currently effective applicable Fund Prospectus and in such other printed information as may be subsequently issued by us as information supplemental to such Prospectus or approved by us in writing for use in connection therewith. You will not use the words "Fidelity Fund, Inc.," "Puritan Fund, Inc.," "Fidelity Capital Fund, Inc.," Fidelity Trend Fund, Inc.," "Salem Fund, Inc.," "Everest Fund, Inc.," "Fidelity Bond-Debenture Fund, Inc.," "Fidelity Group of Funds" or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent or representative of any of the Funds or of this Corporation, and you are not

authorized to act for use or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

This Agreement supersedes and cancels any prior agreement with respect to the sale of shares of any of the Funds for which we are the principal underwriter and we reserve the right to amend this Agreement at any time and from time to time or to terminate the same at any time.

We and/or the Funds in the Fidelity Group of Funds may at any time modify the sales charge and dealer discount to be paid in connection with the sale of shares of any of those Funds. In the event of any such change you agree that you will have no continuing claim to or vested interest in the level of sales charges or dealer discounts established by this Agreement as to any shares purchased subsequent to such change.

Very truly yours,
THE CROSBY CORPORATION
By .....

The undersigned hereby accepts this Agreement and agrees to abide by all of its terms and conditions.

Dated ....., 19..

Firm .....
By .....
Authorized Signature
Address .....

(Title Omitted in Printing)

ANSWER OF DEFENDANT WELLINGTON FUND, INC.

Comes now Wellington Fund, Inc. named as one of the defendants in the above styled case, and answers and responds to the complaint as follows:

First Defense

The complaint fails to state a claim against the defendant upon which relief can be granted.

Second Defense

The alleged unlawful activities of this defendant were required by the Investment Company Act of 1940, 15 U.S.C. § 80a-1, *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. § 78a, *et seq.*, and rules and regulations adopted pursuant to such Acts, and are exempt from the prohibitions of the antitrust laws.

Third Defense

The Court lacks jurisdiction over the subject matter of the complaint and the person of the defendant.

Fourth Defense

1.

With respect to the section of the complaint entitled "Jurisdiction and Venue" this defendant admits that the complaint purports to seek relief under § 4 of the Sherman Act (15 U.S.C. § 4), admits that it is not found and does not transact business in the District of Columbia, and is without knowledge or information sufficient to form a belief as to whether the other defendants are found or transact business in the District of Columbia.

2.

With respect to the section of the complaint entitled "Definitions," this defendant admits the definitions con-

tained in paragraphs 3(a)-(e) and denies the statement of the definitions contained in paragraphs 3(f)-(h).

3.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4 and 5 of the complaint.

4.

This defendant admits the allegations contained in paragraph 6 of the complaint.

5.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7 and 8 of the complaint.

6.

This defendant admits that Wellington Management Company, Inc. acts as principal underwriter for it and for the six other open-end management investment companies listed in paragraph 6 of the complaint (which investment companies are registered with the Securities and Exchange Commission under the Investment Company Act of 1940), pursuant to an underwriting agreement, a specimen copy of which is attached hereto as Exhibit A, and which is filed with the Securities and Exchange Commission as required by the Investment Company Act of 1940 and regulations issued thereunder. This defendant also admits that Wellington Management Company, Inc. has existing sales agreements with each of the defendants named in paragraph 7 of the complaint relating to the sale of shares of each of the registered open-end management investment companies for which Wellington Management Company, Inc. acts as principal underwriter, a specimen copy of which is attached hereto as Exhibit B, and specimens of which are on file with the Securities and Exchange Commission as required by the Investment Company Act of 1940 and regulations issued thereunder. The underwriting agreement referred to above is the only agreement relating to the sale of such shares between this defendant and Wellington

Management Company, Inc. The sales agreement referred to above is the only agreement referring to the sales of the shares of this defendant between Wellington Management Company, Inc. and the broker-dealers named in paragraph 7 of the complaint. This defendant also admits that it must redeem its shares in accordance with the provisions of the Investment Company Act of 1940. Other than as stated above, this defendant denies, or is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

7.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the complaint.

8.

With respect to the allegations of paragraphs 11 and 12 of the complaint, this defendant admits that its shares are normally sold at an offering price described in the prospectus as required by § 22(d) of the Investment Act of 1940, and set forth in the sales agreement attached hereto as Exhibit B. Except as stated above this defendant either denies or is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 11 and 12 of the complaint.

9.

With respect to paragraphs 13 and 14 of the complaint, this defendant avers that the allegations contained therein constitute conclusions of law incapable of being either admitted or denied. To the extent such allegations may be deemed to be allegations of material fact they are denied.

10.

This defendant denies the allegations contained in paragraphs 15, 16, 17 and 18 of the complaint.

11.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations

contained in paragraphs 19, 20, 22, 23 and 24. This defendant reasserts its response in paragraphs 6 through 9 of this Fourth Defense to the allegations contained in paragraph 21 of the complaint.

12.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 25, 26, 28, 29 and 30. This defendant reasserts its response in paragraphs 6 through 9 of this Fourth Defense to the allegations contained in paragraph 27 of the complaint.

13.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 31, 32, 24, 35 and 36. This defendant reasserts its response in paragraphs 6 through 9 of this Fourth Defense to the allegations contained in paragraph 33 of the complaint.

14.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 37, 38, 40, 41 and 42. This defendant reasserts its response in paragraphs 6 through 9 of this Fourth Defense to the allegations contained in paragraph 39 of the complaint.

15.

With respect to the allegations contained in paragraphs 43 through 48 of the complaint this defendant reasserts its response contained in paragraphs 6 through 9 of this Fourth Defense. Except as stated above, this defendant denies the allegations contained in paragraphs 43 through 48.

16.

This defendant admits the allegations of paragraph 49.

17.

With respect to the allegations contained in paragraphs 50 through 54 of the complaint, this defendant reasserts its

response contained in paragraphs 6 through 9 of this Fourth Defense. Except as stated above this defendant denies the allegations contained in paragraphs 50 through 54 of the complaint.

18.

With respect to the allegations contained in paragraphs 55, 57 through 59 of the complaint, defendant admits that Wellington Management Company, Inc. has in effect sales agreements with the broker-dealers named in paragraph 7 of the complaint (a specimen copy of which is attached as Exhibit B) with respect to the sale of this defendant's shares. This defendant reasserts its response contained in paragraphs 6 through 9 of this Fourth Defense in response to the allegations of paragraph 56 of the complaint. Except as stated above, this defendant denies the allegations contained in paragraphs 55 through 59.

WHEREFORE, this defendant files its answer to the plaintiff's complaint and prays that the complaint be dismissed.

By Robert E. Jensen
ROBERT E. JENSEN

OF COUNSEL:

Richard M. Phillips
Hill, Christopher & Phillips
2000 L Street, N.W.
Washington, D.C. 20036
Tel. (202) 833-3990

By W. L. Dickey
WILLIAM L. DICKEY
WILLIAMS & JENSEN
Attorneys for Defendant
Wellington Fund, Inc.
Suite 620, 1130 17th Street, N.W.
Washington, D.C. 20036
Tel. (202) 223-6150

(Certificate of Service Omitted in Printing)

EXHIBIT A

UNDERWRITING AGREEMENT

THIS AGREEMENT, by and between WELLINGTON FUND, INC. a corporation organized and existing under the laws of the State of Maryland (hereinafter called "FUND") and WELLINGTON MANAGEMENT COMPANY, a corporation organized and existing under the laws of the State of Delaware (hereinafter called "COMPANY"):

WITNESSETH:

WHEREAS, FUND is an open-end investment company registered under the Investment Company Act of 1940, the shares of which are registered under the Securities Act of 1933, and is desirous of issuing to the general public all of its now or hereafter authorized, but unissued, shares of capital stock and/or shares of capital stock now or later held in its Treasury; and

WHEREAS, COMPANY is interested in promoting the growth of FUND and will be equipped financially and with qualified personnel and extensive facilities to encourage the sale of shares of FUND by investment dealers and to create and provide the sales literature, advertising and other sales promotional aids necessary to accomplish such growth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby covenant and agree to and with each other as follows:

1. (a) COMPANY agrees to act as the principal underwriter and exclusive national distributor for the shares of FUND and will, upon receipt of unconditional orders from investment dealers or investors (and not before), transmit such bids or orders as agent for FUND for acceptance and confirmation by FUND to its principal office as FUND may from time to time direct. The price at which shares of FUND are offered to the public through COMPANY shall be computed and shall be effective as set forth in the Prospectus of FUND current as of the time of such sale.

(b) FUND reserves the right to reject any order, provided, however, that FUND does hereby covenant and agree that it will not arbitrarily or without reasonable cause refuse acceptance or confirmation of orders obtained and

submitted under this Agreement for the purchase of shares of stock of FUND and, upon receipt thereof, will in all proper cases confirm orders directly through the COMPANY as agent for FUND or authorize the COMPANY, as agent for FUND, to deliver proper confirmations and, if requested, will deliver certificates for shares so purchased to COMPANY as soon as practicable after receipt of payment therefore in cash.

(c) COMPANY agrees that it will not directly or indirectly withhold orders for the purchase of stock of FUND or purchase stock of FUND in anticipation of orders, and does further agree that in all contracts or arrangements with dealers or distributors acting under or through it, it will require a similar contractual undertaking. COMPANY further agrees that it will arrange for the purchase of shares of FUND only from FUND, except when acting as agent for FUND on repurchase of shares under Paragraph 2 hereof.

2. Sales of FUND's shares under this Agreement shall be handled by COMPANY as agent for FUND. With FUND's consent, COMPANY may also act as agent for FUND without commission on repurchase of shares of FUND. Except for such sales and repurchase of shares of FUND, COMPANY shall act as principal in all other matters relating to promotion of the growth of FUND and shall enter into all of its engagements, agreements and contracts as principal on its own account. Furthermore, this Agreement shall not be construed as authorizing any dealer or other person to act as agent, either of FUND or of COMPANY.

3. FUND covenants and agrees that it will, at its own expense:

(a) use its best efforts to keep authorized, but unissued, sufficient of its capital stock to meet the reasonable requirements of COMPANY;

(b) execute or cause to be executed all documents requiring signatures of FUND necessary to permit COMPANY to comply with the provisions of Paragraph 4 hereof;

(c) supply COMPANY with the "net asset value per share" computed as at the time(s) prescribed by and in compliance with all pertinent requirements of the National Association of Securities Dealers and the Securities and Exchange Commission, so as to permit COMPANY to comply with the provisions of Paragraph 4 hereof.

4. COMPANY covenants and agrees that it will, at its own expense:

(a) prepare, file and keep effective registration statements, prospectuses and licenses covering so many shares of stock of FUND as may be necessary to meet COMPANY's reasonable requirements for distribution and sale of such shares in all jurisdictions where shares of FUND may lawfully be sold;

(b) prepare as often as, and at the specific times, required by appropriate authority on each business day for publication in newspapers or other financial publications both the offering price to the public and the liquidation price of FUND shares;

(c) prepare, print and distribute (subject to the provisions of Paragraph 5 hereof) all advertising and sales literature relating to FUND.

5. (a) COMPANY does hereby covenant and agree that it will not issue any statements other than FUND's properly approved Prospectus, except such supplemental literature or advertising (prepared at the expense of COMPANY) as shall be lawful under state and federal securities laws and regulations and under applicable laws and regulations of foreign jurisdictions. COMPANY agrees to file with the Securities and Exchange Commission, the National Association of Securities Dealers, Inc. and such other regulatory authorities as may be required, copies of any advertisement, pamphlet, circular, form letter, or other sales literature relating to FUND or its shares, addressed to or intended for distribution to prospective investors, within the time required by such regulatory authorities, to furnish FUND at its principal office with a copy of all such material prior to its use and not to use such material if the FUND shall reasonably and promptly object to such use.

(b) COMPANY shall conform to all applicable By-Laws, charter provisions, and regulations to which FUND is subject and to applicable laws and regulations of the United States and of the individual states within which COMPANY or FUND may do business, or where shares of FUND are offered for sale, and will conduct its affairs both with relation to FUND and with relation to dealers, or investors, in accordance with the rules of fair practice of the National Association of Securities Dealers, Inc. COMPANY shall also comply with applicable laws and regulations of foreign

jurisdictions in which shares of FUND or securities of an investment company using shares of FUND as its sole underlying investment are offered.

(c) COMPANY agrees to indemnify and hold harmless FUND and each person who has been, is, or may hereafter be an officer or director of FUND against expenses reasonably incurred by any of them in connection with any claim or in connection with any action, suit or proceeding to which any of them may be a party, which arises out of, or is alleged to arise out of any wrongful act of COMPANY or its employees or any misrepresentation in the registration statement of FUND filed under the Securities Act of 1933 of a material fact, or out of any alleged omission to state therein a material fact necessary to make the statements made therein not misleading, insofar as any such statement or omission was made in reliance upon, and in conformity with, information furnished to FUND in connection therewith by, or in behalf of COMPANY, provided, however, that (i) in no case is the indemnity of COMPANY in favor of FUND or any person indemnified to be deemed to protect FUND or any such person against any liability to which FUND or any such person would otherwise be subject by reason of willful misfeasance, bad faith or gross negligence, in the performance of its duties or by reason of its reckless disregard of its obligation and duties under this agreement, and (ii) in no case is COMPANY to be liable under its indemnity agreement contained in this paragraph with respect to any claim made against FUND or any person indemnified, unless FUND or such person, as the case may be, shall have notified COMPANY in writing within a reasonable time after the summons or other first legal process giving information of the nature of the claim shall have been served upon FUND or upon such person (or after FUND or such person shall have received notice of such service on any designated agent). In the case of any such notice to COMPANY, COMPANY shall be entitled to participation, at its own expense, in the defense of any suit brought to enforce any such liability. COMPANY agrees promptly to notify FUND of the commencement of any litigation or proceedings against it in connection with the issue and sale of any of the shares. The term "expenses" includes amounts paid in satisfaction of judgments or in settlement. The foregoing right of indemnification shall be in addition to any other rights to

which FUND or any such officer or director may be entitled as a matter of law.

6. FUND covenants and agrees that it will not, during the term of this Agreement offer any of its shares for sale directly or through any person or corporation other than COMPANY, excepting only (a) the issuance of rights to stockholders to subscribe to shares to the extent of all or part of any dividend that may be distributed to stockholders of FUND or to the extent of any shares that may be taken up under an optional or alternative dividend, or the issuance of additional shares through stock splits or stock dividends, and (b) sales of shares to another investment or securities holding company in the process of converting all or a portion of its assets into shares of FUND or in connection with an issuance of FUND's shares in exchange for shares of another investment or securities holding company, to the extent permitted by the Investment Company Act of 1940, as from time to time amended. Provided, however, that in the event COMPANY should be unable to continue to distribute shares of FUND and such restriction shall not apply to the sale of shares of FUND by any other person, FUND may at its option make arrangements for the offer and sale of its shares within the jurisdiction or jurisdictions in which distribution and sale thereof by COMPANY has been prevented, provided, further however, that if COMPANY shall have removed all material obstacles to resuming the offer and sale within said jurisdictions within ninety days from its first restraint or inability, then the right of FUND to distribute through instrumentalities other than COMPANY shall be extinguished, subject only to the provisions of Paragraph 8 hereof. FUND further agrees that COMPANY may act as principal underwriter and exclusive national distributor for the shares of other investment companies registered under Investment Company Act of 1940. FUND and COMPANY further agree that the shares of the FUND may be sold through COMPANY as agent for the FUND to any investment company which uses the shares of the FUND as its sole underlying investment, provided that such other investment company is sponsored by the COMPANY (or, if a United States investment company, sponsored by a distributor approved by the COMPANY), or by a wholly-owned subsidiary of the COMPANY and, provided further, that if such investment company is organized under

the laws of the United States or is designed to permit its securities to be sold to United States citizens or residents, it shall additionally register under the Investment Company Act of 1940, as from time to time amended.

7. It is hereby mutually agreed that COMPANY in full satisfaction of all services herein agreed to be performed by it shall receive a commission not to exceed 8½% of the offering price of all shares of FUND sold by it after the effective date hereof; provided, however, that the commission payable on separate volume and other special transactions shall be as from time to time set forth in the Prospectus of FUND then in effect, provided further that, if the Prospectus of the FUND so specifies, COMPANY shall receive no commission on sales of shares of FUND at net asset value to those persons described and on the terms provided in Rule 22d-1(h) promulgated under the Investment Company Act of 1940, as amended. The commissions aforesaid shall become due and owing immediately upon settlement for any sale made through COMPANY and COMPANY shall deduct such commissions from any remittance to FUND, provided, however, that if change is required in the aforesaid commissions, either by duly constituted regulatory authorities, or for business reasons, the amount payable to FUND from the sale of shares shall always equal the then current net asset value per share. COMPANY agrees that, if shares are repurchased by FUND or by COMPANY as agent for FUND, or are tendered to FUND for redemption within seven days after confirmation by COMPANY, as agent, of the original purchase order to any broker or dealer originating such transaction, COMPANY will immediately remit to FUND the commission (net of allowances of dealers or brokers) on such sale paid to COMPANY and will promptly, upon receipt thereof, pay to FUND any refunds of the balance of sales commissions repaid to COMPANY by brokers or dealers. Notwithstanding the foregoing, all sales of shares of FUND to any investment company in accordance with the provisions of Paragraph 6 of this Agreement as amended shall be made through COMPANY at net asset value, and no commissions shall be charged to, or paid by, such investment company with respect to such shares.

8. This Agreement shall become effective on April 1, 1973, and shall continue in force until March 31, 1975, and thereafter, only so long as such continuance is approved at

least annually thereafter by a vote of the Fund's Board of Directors, including the votes of a majority of the directors who are not parties to such Contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting such approval.

9. Subject to the provisions of the immediately preceding paragraph, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, provided, however, that this Agreement shall terminate automatically upon assignment by COMPANY as provided for and defined in the Investment Company Act of 1940 as amended, unless under the exemptive provisions of Section 6(c) of such Act, the Securities and Exchange Commission shall determine that a conditional or unconditional order of exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and practice of such Act; in which event this Agreement shall continue in full force and effect.

10. In the event that this Agreement, or any part thereof, shall become unlawful under any future law of the United States, or any state, territory, possession or district thereof, or any regulations of the United States, any state, territory, possession and district thereof, or any department, board or commission or other governmental authority having jurisdiction over its performance, such unlawful portion of the Agreement shall be considered as though it were deleted by mutual consent; but the remaining provisions of the Agreement shall not cease and terminate and the parties hereto shall confer and attempt to agree to such change or modification in the said Agreement as will cause it to conform to said law or regulation and will maintain the general purpose and provisions of this Agreement in a manner equitable to each of the parties hereto. If, in such event, the parties hereto are unable to agree with respect to the said modification, each shall promptly appoint one arbitrator and the two arbitrators so appointed shall appoint a third arbitrator, who shall consider all the facts and circumstances relating to this Agreement and to the necessary modification thereof to comply with such future law or regulation, and if, in the opinion of said arbitrators, or a majority of them, a modification of the said Agreement may be made which will comply with the said new law or regula-

tion and will maintain the general purposes of this Agreement and be fair and equitable to both of the parties hereto, they shall direct in what particulars this Agreement shall be modified and amended, and upon the receipt by each of the parties hereto of the written report of the arbitrators, the Agreement shall thereupon be deemed to be altered and amended as provided in the said report and as so altered and amended shall continue to be effective and binding on both of the parties hereto. The provisions of this Paragraph 10 shall be administered in accordance with provisions of the Act of Assembly of the Commonwealth of Pennsylvania, enacted April 25, 1927, P.L., 381 Number 248, as amended. Provided, however, that neither FUND, nor COMPANY, shall be bound to accept the directions of the arbitrators if the modification or amendment of the Agreement stated in the Arbitrators' written report would, in the opinion of counsel for FUND, require approval under the provisions of Section 15(c) of the Investment Company Act of 1940, as amended, and provided further that FUND reserves the right in the event of any award or decision by the arbitrators to call a special meeting of the stockholders of the FUND and to submit to the vote of the stockholders the question of whether the recommendations of the arbitrators shall or shall not be adopted by and binding upon the FUND, in which case the decision of the stockholders shall be final and binding upon FUND and COMPANY.

11. It is the intention of the parties hereto that this Agreement shall be governed and construed according to the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers and to have hereunto affixed their respective corporate seals this First day of April, 1973.

Attest:
Secretary

Attest:
Secretary

WELLINGTON FUND, INC.
By:
President

WELLINGTON MANAGEMENT COMPANY
By:
President

EXHIBIT B

WELLINGTON MANAGEMENT COMPANY
1630 LOCUST STREET · PHILADELPHIA, PA. 19103

Sales Agreement

with respect to

WELLINGTON FUND WINDSOR FUND IVEST FUND W. L. MORGAN GROWTH FUND WELLESLEY INCOME FUND EXPLORER FUND TRUSTEES' EQUITY FUND

Gentlemen:

As National Distributor for the shares of Wellington Fund, Windsor Fund, Ivest Fund, Explorer Fund, W. L. Morgan Growth Fund, Trustees' Equity Fund, Wellesley Income Fund, and any other mutual fund for which we may hereafter act as Distributor (the "Funds"), we invite you to become a member of the Selling Group to distribute the shares of said Funds upon the following terms:

Ordering of Shares

1. Orders received from you will be accepted by us for the Funds only at the public offering price applicable to each order, as established in accordance with the provisions of the then current Prospectus of each of the Funds. The procedure stated herein relating to the pricing and handling of orders shall be subject to instructions which we will forward from time to time to all members of the Selling Group. All orders are subject to acceptance or rejection by the Funds in their sole discretion.

2. You agree to purchase shares only from the Funds through us or from your customers. If you purchase shares from the Funds you agree that all such purchases shall be made only to cover orders already received by you from your customers (who may be any persons other than a securities dealer or broker), or for your own investment. If you purchase shares from your customers, you agree to pay such customers not less than the bid prices quoted by us as agent at the time of such purchase. As distributor, we will not accept a conditional offer for shares of the Funds.

3. You agree to sell shares only

(a) as principal, for your own account, to customers at the public offering price then in effect;

(b) to the Funds through Wellington Management Company, as agent for the Funds at the net asset value next determined after our receipt of the request for repurchase of the shares subject to such procedural standards as may from time to time be established or approved by the appropriate regulatory agencies. In such a sale to the Funds you may act either as principal for your own account or as agent for your customer. If you act as principal for your own account, you agree to pay your customer (unless the shares are in your investment account) not less than the price so determined. If you act as agent for your customer in selling shares to the Funds you may charge a fair commission for handling the transaction. All transactions in shares of Funds between you and us are between us as agent for the Funds concerned and you, either as principal for your own account or as agent for an undisclosed principal.

Dealer Discount and Sales Charge

4. The shares of the Funds will be offered to the public at a public offering price which will include a sales charge in varying amounts depending on the size of the purchase or other circumstances as described in the then current Prospectus of each of the Funds. On such sales you will receive a discount as shown in the following table (with the sales charge and discount stated as a percentage of the applicable offering price).

Amount of Sale	Gross Sales Charge	Dealer Discount
Less than $10,000 *	8.50%	7.00%
$10,000 but under $25,000	7.75	6.25
$25,000 but under $50,000	6.00	4.50
$50,000 but under $100,000	4.50	3.50
$100,000 but under $250,000	3.25	2.50
$250,000 but under $500,000	2.50	2.00
$500,000 but under $1,000,000	2.00	1.50
$1,000,000 but under $5,000,000	1.50	1.125
$5,000,000 and over	1.00	0.75

* The minimum initial purchase for Explorer Fund is $5,000.

5. The Funds may change the amount of the gross sales charge or the dealer discount or both at any time upon written notice to you.

6. You shall not withhold placing with us orders received from your customers so as to profit yourself as a result of such withholding, nor shall we accept from you any order for shares on any basis other than in accordance with the rules for such orders as may, from time to time, be established by the appropriate regulatory agencies.

7. If any shares sold to you under the terms of this agreement are repurchased by the Funds or by Wellington Management Company for the account of the Funds, or are tendered for repurchase or redemption within seven business days after the date of the confirmation of the original purchase by you, it is agreed that you shall forfeit your right to any discount received by you on such shares.

We shall notify you of any such repurchase or redemption within ten business days from the date on which the certificate is delivered to Wellington Management Company, or to the Funds and you shall forthwith refund to us the full discount allowed to you on such sale. We agree, in the event of any such repurchase or redemption, to refund to the Funds our share of the sales charge and upon receipt from you of the refund of the discount allowed to you, to pay such refund forthwith to the Funds.

8. Notwithstanding any of the foregoing provisions, orders to purchase shares received by us in connection with any exchange privilege made available to the shareholders of the respective Funds will be at the public offering price less all sales charges as applicable to each order and established by the then effective Prospectus of the Fund concerned. Orders to redeem shares under such exchange privilege shall not be subject to commission charge by either you or us.

Payment and Delivery

9. Orders and confirmation should be sent directly to Wellington Management Company, 1630 Locust Street, Philadelphia, Pa. 19103. Payment for shares shall be made payable to the order of Wellington Management Company and sent to the Funds' Transfer Agent, Data-Sys-Tance, Inc., P. O. Box 1400, Kansas City, Mo. 64141. The Funds reserve the right to delay issuance or transfer until the

check is cleared. Payment shall be received by us within five days after acceptance by us for the Funds of your order. If such payment is not so received we reserve the right, without notice, forthwith to cancel the sale, and we may hold you responsible for any loss, including loss of profit, suffered by us or by the Funds resulting from your failure to make such payment.

10. No person is authorized to make any representations concerning shares of the Funds except those contained in the then current Prospectus of each of the Funds and in printed information subsequently issued by each of the Funds as information supplemental to such Prospectus. In all sales of these shares to the public you shall act as dealer for your own account, and in no transaction shall you have any authority to act as agent for the Funds for us or for any other member of the Selling Group. In purchasing shares from us you shall rely solely on the representations contained in the Prospectus of each of the Funds concerned and supplemental information above mentioned.

11. Additional copies of the then current Prospectus for each of the Funds and any printed information issued as supplemental to such Prospectus will be supplied by us in reasonable quantities upon request.

12. The Funds reserve the right in their own discretion, without notice, at any time and from time to time, to suspend sales or withdraw the offering of shares entirely. We reserve the right to amend this Agreement, and to reject in whole or in part any order received by us from you. Either party hereto may cancel this Agreement at any time. All purchase orders received by us will be subject to receipt of shares by us from the Fund concerned.

13. Each of us hereby represents and agrees that each of us is and will continue to be during the life of this Agreement a member of the National Association of Securities Dealers, Inc., or that we are a foreign dealer and we are not eligible for membership in said Association, and in any event we both hereby agree to abide by the Rules of Fair Practice of that Association.

14. All communications to us should be sent to the above address. Any notice to you shall be duly given if mailed or telegraphed to you at the address specified by you below. This Agreement shall be construed in accordance with the laws of Pennsylvania.

15. Your first order placed with us for the purchase of shares of any of the Funds will represent your acceptance of this Agreement.

WELLINGTON MANAGEMENT COMPANY
By William G. Gallagher
Senior Vice President—Sales

Please return one signed copy of this agreement to:
Wellington Management Company
Order Department
1630 Locust Street
Philadelphia, Pa. 19103

Accepted:

Firm Name: .....
By: .....
Address: .....
.....
Date: .....

(Title Omitted in Printing)

ANSWER OF THE DEFENDANT VANCE, SANDERS & COMPANY, INC.

1. The defendant Vance, Sanders & Company, Inc. ("the defendant") admits that the action purports to be brought under section 4 of the Act of Congress of July 2, 1890 commonly known as the Sherman Act, 15 U.S.C. § 4, to restrain alleged continuing violations of section 1 of said Act, 15 U.S.C. § 1, but denies that the action can be so maintained.

2. The defendant admits that it presently has an office in the District of Columbia and that the defendant Massachusetts Investors Growth Stock Fund, Inc. does not transact business, and is not found, therein. The defendant is without information sufficient to form a belief as to the truth or falsity of the other allegations of paragraph 2 of the Complaint.

3. Paragraph 3 of the Complaint does not call for any answer. The defendant further says that it does not accept as correct the definitions in paragraph 3 of the Complaint.

4. The defendant is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4 of the Complaint.

5. The defendant admits the allegations of the first sentence of paragraph 5 of the Complaint. The defendant admits that it is presently the principal underwriter of the mutual funds listed in paragraph 5 of the Complaint and says that said mutual funds presently have combined net assets in excess of $3.7 billion. Further answering the allegations of paragraph 5 of the Complaint, the defendant says that after June 30, 1973, it will no longer act as principal underwriter for Massachusetts Investors Growth Stock Fund, Inc., Massachusetts Investors Trust, Massachusetts Income Development Fund, Massachusetts Capital Development Fund and Massachusetts Financial Development Fund and that it does not accept the characterization of any of the funds listed in paragraph 5 of the Complaint as the "Vance Sanders Funds".

6. The defendant is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 6 of the Complaint.

7. The defendant is without information sufficient to form

a belief as to the truth or falsity of the allegations of paragraph 7 of the Complaint.

8. The defendant admits the allegations of the first and third sentences of paragraph 8 of the Complaint. The defendant is without information sufficient to form a belief as to the truth of falsity of the allegations of the second sentence of paragraph 8 of the Complaint.

9. The defendant admits the allegations of the first sentence of paragraph 9 of the Complaint. The defendant admits that shares of the mutual funds for which it acted as principal underwriter as of February 21, 1973 ("the Vance Sanders underwritten funds") are continuously issued and redeemed by said mutual funds, that the shares of the Vance Sanders underwritten funds are presently distributed through the defendant which presently has the exclusive contractual right to distribute said shares to dealers for resale and that the defendant enters into selling group agreements with broker-dealers which sell shares of the Vance Sanders underwritten funds to investors, the current form of which selling group agreement is attached hereto and incorporated herein marked "A". The defendant is otherwise without information sufficient to form a belief as to the truth or falsity of the allegations of the second, third and fourth sentences of paragraph 9 of the Complaint. The defendant denies the allegations of the fifth sentence of paragraph 9 of the Complaint. The sixth sentence of paragraph 9 of the Complaint is a conclusion of law which the defendant is not required to answer. The defendant admits that some mutual fund shares are purchased, sold and redeemed in interstate commerce. The defendant is otherwise without information sufficient to form a belief as to the truth or falsity of the allegations of the seventh sentence of paragraph 9 of the Complaint. The defendant is without information sufficient to form a belief as to the truth or falsity of the allegations of the eighth sentence of paragraph 9 of the Complaint.

10. The defendant is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 10 of the Complaint.

11. The defendant admits that the public offering prices of the Vance Sanders underwritten funds, as described in the prospectuses thereof, are based on net asset values plus sales charges, the maxima of which are presently 8.5% of

the public offering prices for purchases of less than $12,500 (less on larger purchases), and that the Vance Sanders underwritten funds redeem their outstanding shares, upon presentation for redemption, at the then current net asset values. The defendant is otherwise without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 11 of the Complaint.

12. The defendant admits that, when a share of a Vance Sanders underwritten fund is sold, the defendant presently retains a portion of the sales charge which is usually 2.0% when the sales charge is 8.5% (less when the sales charge is less). The defendant is otherwise without information sufficient to form a belief as to the truth or falsity of the allegations of the first sentence of paragraph 12 of the Complaint. The defendant is without information sufficient to form a belief as to the truth or falsity of the allegations of the second and third sentences of paragraph 12 of the Complaint.

13. Answering the allegations of paragraph 13 of the Complaint, the defendant says that section 22(d) of the Investment Company Act is codified as 15 U.S.C. § 80a-22(d) and is in writing and, read in conjunction with its history and all other relevant and pertinent interpretive material, speaks for itself. And further answering the allegations of paragraph 13 of the Complaint, the defendant says that neither as enacted in 1940, nor as amended in 1970, has section 22(d) of the Investment Company Act ever contained the alleged provision "engaged in a dealer transaction" which the plaintiff now gratuitously interpolates into the statute.

14. The allegations of paragraph 14 of the Complaint are legal conclusions which the defendant is not required to answer.

15. The defendant denies the allegations of paragraph 15 of the Complaint.

16. The defendant denies the allegations of paragraph 16 of the Complaint.

17. Answering the allegations of paragraph 17 of the Complaint, the defendant says that he rules of the NASD have always been on file with the Securities and Exchange Commission and have always been readily available to interested members of the public and are in writing and speak for themselves and that this is not the proper forum or

type of proceeding for an attack by the plaintiff on rules promulgated pursuant to authority conferred by the Congress of the United States and under the supervision of the Securities and Exchange Commission. Otherwise the defendant denies the allegations of paragraph 17 of the Complaint.

18. The defendant denies the allegations of paragraph 18 of the Complaint.

19-30. The defendant is not made a defendant in Count II or Count III of the Complaint and is therefore not called upon to answer the allegations of paragraphs 19 through 30 inclusive of the Complaint.

31. The defendant admits that it is made a defendant in Count IV of the Complaint and further answering the allegations of paragraph 31 of the Complaint restates the averments of paragraph 5 of this Answer with the same force and effect as if herein set forth and repeated in full.

32. The defendant admits that the so-called defendant broker/dealers are made defendants in Count IV of the Complaint and further answering the allegations of paragraph 32 of the Complaint restates the averments of paragraph 7 of this Answer with the same force and effect as if herein set forth and repeated in full.

33. The defendant restates the averments of paragraphs 9 through 14 inclusive of this Answer with the same force and effect as if herein set forth and repeated in full.

34. The defendant denies the allegations of paragraph 34 of the Complaint.

35. The defendant says that the current form of its selling group agreement is attached hereto and incorporated herein marked "A" and is in writing and speaks for itself. Except as averred, the defendant denies the allegations of paragraph 35 of the Complaint.

36. The defendant denies the allegations of paragraph 36 of the Complaint.

37. The defendant admits that Massachusetts Investors Growth Stock Fund, Inc. ("MIGS") is made a defendant in Count V of the Complaint, that MIGS is a corporation organized under the law of the Commonwealth of Massachusetts, that MIGS is an open-end management type investment company commonly known as a mutual fund, that as of February 21, 1973, MIGS had net assets in excess of $1.2 billion and that in the fiscal year ended November

30, 1970 approximately $69.9 million of treasury or newly issued MIGS shares were sold to investors. The defendant is without information sufficient to form a belief as to the truth or falsity of the other allegations of paragraph 37 of the Complaint.

38. The defendant admits that it is made a defendant in Count V of the Complaint and further answering the allegations of paragraph 38 of the Complaint restates the averments of paragraph 5 of this Answer with the same force and effect as if herein set forth and repeated in full.

39. The defendant restates the averments of paragraphs 9 through 14 inclusive of this Answer with the same force and effect as if herein set forth and repeated in full.

40. The defendant denies the allegations of paragraph 40 of the Complaint.

41. The defendant admits that, pursuant to its agreements with the Vance Sanders underwritten funds, it presently acts as principal for its own account in the sale of shares of said funds to dealers. Except as expressly admitted, the defendant denies the allegations of paragraph 41 of the Complaint.

42. The defendant denies the allegations of paragraph 42 of the Complaint.

43-59. The defendant is not made a defendant in Count VI, Count VII or Count VIII of the Complaint and is therefore not called upon to answer the allegations of paragraphs 43 through 59 inclusive of the Complaint.

Second Defense

The Complaint and each of Counts I, IV and V thereof fails to state a claim on which relief can be granted.

Third Defense

Any acts of the defendant and the other defendants which are the subject matter of the Complaint were authorized by the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, by the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.*, and by the Securities and Exchange Commission acting with the powers conferred upon it by said Acts and as so authorized do not constitute a violation of any of the laws of the United States.

Fourth Defense

The Congress of the United States has delegated exclusive authority and administrative supervision over the matters alleged in the Complaint to the Securities and Exchange Commission to the exclusion of the jurisdiction of the courts of the United States including this Court.

WHEREFORE, the defendant prays that the Complaint be dismissed and for its costs.

VANCE, SANDERS & COMPANY, INC.
By its attorneys,

Herbert J. Miller, Jr.
Miller, Cassidy, Larroca & Lewin
Suite 500
1320 19th Street, N.W.
Washington, D.C. 20036
Telephone 293-6400

OF COUNSEL:
George C. Caner, Jr.
John Silas Hopkins, III
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110
Telephone 617-423-6100

March 26, 1973

EXHIBIT A TO ANSWER OF DEFENDANT VANCE, SANDERS & CO.

VANCE, SANDERS & COMPANY, INC.
111 Devonshire Street
Boston 02109

Boston Fund
Boston Common Stock Fund
Century Shares Trust
Massachusetts Capital Development Fund
Massachusetts Financial Development Fund
Massachusetts Income Development Fund
Massachusetts Investors Growth Stock Fund
Massachusetts Investors Trust
Vance, Sanders Special Fund

Dear Sirs:

We are the Principal Underwriter of the shares of Boston Fund, Inc., Boston Common Stock Fund, Inc., Century Shares Trust, Massachusetts Capital Development Fund, Inc., Massachusetts Financial Development Fund, Inc., Massachusetts Income Development Fund, Inc., Massachusetts Investors Growth Stock Fund, Inc., Massachusetts Investors Trust and Vance, Sanders Special Fund, Inc. and, as such, have the exclusive right to distribute shares of these Funds for resale. As principal, we offer to sell to you, as a member of the Selling Group, shares of each of these Funds upon the following terms and conditions:

1. In all sales of these shares to the public you shall act as dealer for your own account, and in no transaction shall you have any authority to act as agent for the issuer, for us or for any other member of the Selling Group.

2. Orders received from you will be accepted through us only at the public offering price applicable to each order, as established by the then current Prospectus of the Fund for whose shares the order is placed. The procedure relating to the handling of orders shall be subject to instructions which we shall forward from time to time to all members of the Selling Group. All orders are subject to acceptance or rejection by us in our sole discretion.

3. For a schedule of the offering prices of the shares of each of the Funds and of your discount with respect to the sale of shares of each of the Funds see the reverse side hereof. The term "single transaction" shall have the same

meaning as set forth in the current Prospectus of each Fund.

4. You agree to purchase shares only through us or from your customers other than dealers or brokers. If you purchase shares through us, you agree that all such purchases shall be made only to cover orders already received by you from your customers, or for your own bona fide investment. If you purchase shares from your customers, you agree to pay such customers not less than the bid price quoted by us as agent for the issuer at the time of such purchase.

5. You shall sell shares only

(a) to customers at the public offering price then in effect.

(b) to us or the Fund upon the terms and conditions set forth in the current Prospectus of each Fund. In such a sale, you may act either as principal for your own account or as agent for your customer. If you act as agent for your customer in selling shares, you agree not to charge your customer more than a fair commission for handling the transaction.

6. You shall not withhold placing through us orders received from your customers so as to profit yourself as a result of such withholding: e.g., by a change in the "net asset value" from that used in determining the offering price to your customers.

7. We will not accept from you any conditional orders or shares, except at a definite specified price.

8. If any shares sold to you under the terms of this agreement are repurchased by the issuer or by us as agent for any such Fund or are tendered for redemption, within seven business days after the date of our confirmation of the original purchaser by you, it is agreed that you shall forfeit your right to any discount received by you on such shares.

We will notify you of any such repurchase or redemption within ten business days from the date on which the certificate is delivered to us or to the issuer, and you shall forthwith refund to us the full discount allowed to you, and we agree to pay such refund forthwith to the issuer.

9. Payment for shares ordered from us shall be in New York or Boston clearing house funds received by us within

five days after our acceptance of your order. If such payment is not received by us, we reserve the right, without notice, forthwith to cancel the sale, or, at our option, to sell the shares ordered back to the issuer, in which latter case we may hold you responsible for any loss, including loss of profit, suffered by us resulting from your failure to make payment as aforesaid.

10. Shares sold to you hereunder shall be available to you for delivery against payment at the office of our agent, the New England Merchants National Bank, Mutual Funds Clearance Department, Boston, Massachusetts, unless other arrangements are made with us for delivery and payment.

11. No person is authorized to make any representations concerning shares of the issuer except those contained in the current Prospectus and in such printed information subsequently issued by us as information supplemental to such Prospectus. In purchasing shares through us you shall rely solely on the representations contained in the appropriate Prospectus and supplemental information above mentioned. Qualification of the shares of Boston Fund, Inc., Boston Common Stock Fund, Inc., Century Shares Trust, Massachusetts Capital Development Fund, Inc., Massachusetts Financial Development Fund, Inc., Massachusetts Income Development Fund, Inc., Massachusetts Investors Growth Stock Fund, Inc., Massachusetts Investors Trust and Vance, Sanders Special Fund, Inc. in the various states, including the filing of any state or further state notices respecting such shares, and any printed information which we furnish you other than the Funds' Prospectuses and periodic reports are our sole responsibility and not the responsibility of the respective Funds, and you agree that these Funds shall have no liability or responsibility to you in these respects.

12. Additional copies of any current Prospectus and any printed information issued as supplemental to such Prospectus will be supplied by us in reasonable quantities upon request.

13. We reserve the right in our discretion, without notice, to suspend sales or withdraw the offering of shares entirely. Each party hereto has the right to cancel this agreement upon notice to the other party.

14. You represent that you are a member of the National

Association of Securities Dealers and we both hereby agree to abide by the Rules of Fair Practice of such Association.

15. All communications to us should be sent to the above address. Any notice to you shall be duly given if mailed or telegraphed to you at the address specified by you below. This agreement shall be construed in accordance with the laws of Massachusetts.

16. This agreement supersedes and cancels any prior agreement with respect to the sale of shares of any of the aforementioned Funds.

17. You appoint the transfer agent for each Fund as your agent to execute the purchase transactions of shares of each Fund in accordance with the terms and provisions of any account, program, plan or service established or used by your customers and to confirm each purchase to your customers on your behalf, and you guarantee the legal capacity of your customers so purchasing such shares and any co-owners of such shares.

NOTE: The term "net asset value" as used in paragraphs 5 and 6 and on the schedule "Offering Prices" means "liquidating value" in the case of Boston Fund and Century Shares Trust.

VANCE, SANDERS & COMPANY, INC.
By John D. Wilson
President

Dated .....

The undersigned hereby accepts the offer set forth in the above letter.

Firm .....
By .....
Authorized Representative
Address .....

OFFERING PRICES

In single transactions by you of shares of Boston Fund, Boston Common Stock Fund, Century Shares Trust, Massachusetts Capital Development Fund, Massachusetts Financial Development Fund, Massachusetts Income Development Fund, Massachusetts Investors Growth Stock Fund, Massachusetts Investors Trust or Vance, Sanders Special Fund involving: (1) less than $12,500, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .915, in each case determined in the manner and as of the time specified in the Prospectus; (2) $12,500 but less than $25,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .925; (3) $25,000 but less than $50,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .9425; (4) $50,000 but less than $100,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .96; (5) $100,000 but less than $250,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .9675; (6) $250,000 but less than $500,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .975; (7) $500,000 but less than $1,000,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .9775; and (8) $1,000,000 or more, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .9825.

DEALER DISCOUNTS

On the purchase of shares by you to cover a single transaction involving: (1) less than $12,500, you shall receive a discount from the applicable public offering price of 6.50% with respect to shares of Boston Fund, Boston Common Stock Fund, Century Shares Trust, Massachusetts Capital Development Fund, Massachusetts Financial Development Fund, Massachusetts Income Development Fund, Massachusetts Investors Growth Stock Fund, Massachusetts Investors Trust and Vance, Sanders Special Fund, except that

in supplementary purchases of shares of any of these Funds under the invest-by-mail program, you shall receive a discount from the applicable public offering price of 6.00% (except that on Dividend Reinvestments only, discounts of less than $5 will not be paid); (2) $12,500 but less than $25,000, you shall receive a discount from the applicable public offering price of 6.00%; (3) $25,000 but less than $50,000, you shall receive a discount from the applicable public offering price of 4.25%; (4) $50,000 but less than $100,000, you shall receive a discount from the applicable public offering price of 3.00%; (5) $100,000 but less than $250,000, you shall receive a discount from the applicable public offering price of 2.50%; (6) $250,000 but less than $500,000, you shall receive a discount from the applicable public offering price of 2.00%; (7) $500,000 but less than $1,000,000, you shall receive a discount from the applicable public offering price of 1.75% and (8) $1,000,000 or more, you shall receive a discount from the applicable public offering price of 1.25%.

December 29, 1972

AMENDMENT TO SELLING GROUP AGREEMENT

To Selling Group Members:

Effective today, the name of Boston Common Stock Fund is changed to Vance, Sanders Common Stock Fund. Accordingly, we wish to advise you that the present Selling Group Agreement between our firms is amended to reflect this name change in the following paragraphs:

(1) The initial paragraph of the Agreement which lists the group of Funds for which we are the underwriter.
(2) The third sentence of paragraph 11 of the Agreement.
(3) The two paragraphs on the reverse side of the Agreement headed "Offering Prices" and "Dealer Discounts."

In place of your signing and returning a duplicate copy of this revision of the Selling Group Agreement, we will consider your first order on or after December 29, 1972 as acceptance of this revision.

This amendment to the Selling Group Agreement should be attached to your file copy of the Agreement inasmuch as it is part of the Agreement as of the date hereof.

VANCE, SANDERS & COMPANY, INC.
By John D. Wilson
JOHN D. WILSON
President

(Certificate of Service Omitted in Printing)

(Title Omitted in Printing)

ANSWER OF DEFENDANT WELLINGTON MANAGEMENT COMPANY, INC.

Comes now Wellington Management Company, Inc. named as one of the defendants in the above styled case, and answers and responds to the complaint as follows:

First Defense

The complaint fails to state a claim against the defendant upon which relief can be granted.

Second Defense

The alleged unlawful activities of this defendant were required by the Investment Company Act of 1940, 15 U.S.C. § 80a-1, *et seq.*, the Securities Exchange Act of 1934, 15 U.S.C. § 78a, *et seq.*, and rules and regulations adopted pursuant to such Acts, and are exempt from the prohibitions of the antitrust laws.

Third Defense

The Court lacks jurisdiction over the subject matter of the complaint and the person of the defendant.

Fourth Defense

1.

With respect to the section of the complaint entitled "Jurisdiction and Venue" this defendant admits that the complaint purports to seek relief under § 4 of the Sherman Act (15 U.S.C. § 4), admits that Wellington Fund, Inc. is not found and does not transact business in the District of Columbia, and is without knowledge or information sufficient to form a belief as to whether the other defendants are found or transact business in the District of Columbia.

2.

With respect to the section of the complaint entitled "Definitions," this defendant admits the definitions con-

tained in paragraph 3(a)-(e) and denies the statement of the definitions contained in paragraphs 3(f)-(h).

3.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4 and 5 of the complaint.

4.

This defendant admits the allegations contained in paragraph 6 of the complaint.

5.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 7 and 8 of the complaint.

6.

This defendant admits that it acts as principal underwriter for the seven open-end management investment companies listed in paragraph 6 of the complaint (which investment companies are registered with the Securities and Exchange Commission under the Investment Company Act of 1940) pursuant to an underwriting agreement, a specimen copy of which is attached hereto as Exhibit A, and which is filed with the Securities and Exchange Commission as required by the Investment Company Act of 1940 and regulations issued thereunder. This defendant also admits that it has existing sales agreements with each of the defendants named in paragraph 7 of the complaint relating to the sale of shares of each of the registered open-end management investment companies for which it acts as principal underwriter, a specimen copy of which is attached hereto as Exhibit B, and specimens of which are on file with the Securities and Exchange Commission as required by the Investment Company Act of 1940 and regulations issued thereunder. The underwriting agreement referred to above is the only agreement relating to the sale of such shares between this defendant and the registered open-end companies referred to in paragraph 6 of the complaint. The sales agreement referred to above is

the only agreement referring to the sales of the shares of such registered companies between this defendant and the broker-dealers named in paragraph 7 of the complaint. This defendant also admits that the registered open-end management investment companies for which it acts as principal underwriter must redeem their shares in accordance with the provisions of the Investment Company Act of 1940. Other than as stated above, this defendant denies, or is without information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

7.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the complaint.

8.

With respect to the allegations of paragraphs 11 and 12 of the complaint, this defendant admits that shares of the registered open-end management investment companies for which it acts as principal underwriter are normally sold at an offering price described in the prospectus as required by § 22(d) of the Investment Act of 1940, and set forth in the sales agreement attached hereto as Exhibit B. Except as stated above this defendant either denies or is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 11 and 12 of the complaint.

9.

With respect to paragraphs 13 and 14 of the complaint, this defendant avers that the allegations contained therein constitute conclusions of law incapable of being either admitted or denied. To the extent such allegations may be deemed to be allegations of material fact they are denied.

10.

This defendant denies the allegations contained in paragraphs 15, 16, 17 and 18 of the complaint.

11.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 19, 20, 22, 23 and 24. This defendant reasserts its response in paragraphs 6 through 9 of this Fourth Defense to the allegations contained in paragraph 21 of the complaint.

12.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 25, 26, 28, 29 and 30. This defendant reasserts its response in paragraphs 6 through 9 of this Fourth Defense to the allegations contained in paragraph 27 of the complaint.

13.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 31, 32, 34, 35 and 36. This defendant reasserts its response in paragraphs 6 through 9 of this Fourth Defense to the allegations contained in paragraph 33 of the complaint.

14.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 37, 38, 40, 41 and 42. This defendant reasserts its response in paragraphs 6 through 9 of this Fourth Defense to the allegations contained in paragraph 39 of the complaint.

15.

With respect to the allegations contained in paragraphs 43 through 48 of the complaint this defendant reasserts its response contained in paragraphs 6 through 9 of this Fourth Defense. Except as stated above, this defendant denies the allegations contained in paragraphs 43 through 48.

16.

This defendant admits the allegations of paragraph 49.

17.

With respect to the allegations contained in paragraphs 50 through 54 of the complaint, this defendant reasserts its response contained in paragraphs 6 through 9 of this Fourth Defense. Except as stated above this defendant denies the allegations contained in paragraphs 50 through 54 of the complaint.

18.

With respect to the allegations contained in paragraphs 55, 57 through 59 of the complaint, defendant admits that it has in effect sales agreements with the broker-dealers named in paragraph 7 of the complaint, a specimen copy of which is attached as Exhibit B. This defendant reasserts its response contained in paragraphs 6 through 9 of this Fourth Defense in response to the allegations of paragraph 56 of the complaint. Except as stated above, this defendant denies the allegations contained in paragraphs 55 through 59.

WHEREFORE, this defendant files its answer to the plaintiff's complaint and prays that the complaint be dismissed.

By Robert E. Jensen
ROBERT E. JENSEN

By W. L. Dickey
WILLIAM L. DICKEY
WILLIAMS & JENSEN
Attorneys for Defendant
Wellington Management Company, Inc.
Suite 620, 1130 17th Street, N.W.
Washington, D.C. 20036
Tel. (202) 223-6150

OF COUNSEL:
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Hill, Christopher & Phillips
2000 L Street, N.W.
Washington, D.C. 20036
Tel. (202) 833-3990

(Certificate of Service Omitted in Printing)

EXHIBIT A

UNDERWRITING AGREEMENT

THIS AGREEMENT, by and between WELLINGTON FUND, INC. a corporation organized and existing under the laws of the State of Maryland (hereinafter called "FUND") and WELLINGTON MANAGEMENT COMPANY, a corporation organized and existing under the laws of the State of Delaware (hereinafter called "COMPANY"):

WITNESSETH:

WHEREAS, FUND is an open-end investment company registered under the Investment Company Act of 1940, the shares of which are registered under the Securities Act of 1933, and is desirous of issuing to the general public all of its now or hereafter authorized, but unissued, shares of capital stock and/or shares of capital stock now or later held in its Treasury; and

WHEREAS, COMPANY is interested in promoting the growth of FUND and will be equipped financially and with qualified personnel and extensive facilities to encourage the sale of shares of FUND by investment dealers and to create and provide the sales literature, advertising and other sales promotional aids necessary to accomplish such growth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby covenant and agree to and with each other as follows:

1. (a) COMPANY agrees to act as the principal underwriter and exclusive national distributor for the shares of FUND and will, upon receipt of unconditional orders from investment dealers or investors (and not before), transmit such bids or orders as agent for FUND for acceptance and confirmation by FUND to its principal office as FUND may from time to time direct. The price at which shares of FUND are offered to the public through COMPANY shall be computed and shall be effective as set forth in the Prospectus of FUND current as of the time of such sale.

(b) FUND reserves the right to reject any order, provided, however, that FUND does hereby covenant and agree that it will not arbitrarily or without reasonable cause refuse acceptance or confirmation of orders obtained and

submitted under this Agreement for the purchase of shares of stock of FUND and, upon receipt thereof, will in all proper cases confirm orders directly through the COMPANY as agent for FUND or authorize the COMPANY, as agent for FUND, to deliver proper confirmations and, if requested, will deliver certificates for shares so purchased to COMPANY as soon as practicable after receipt of payment therefore in cash.

(c) COMPANY agrees that it will not directly or indirectly withhold orders for the purchase of stock of FUND or purchase stock of FUND in anticipation of orders, and does further agree that in all contracts or arrangements with dealers or distributors acting under or through it, it will require a similar contractual undertaking. COMPANY further agrees that it will arrange for the purchase of shares of FUND only from FUND, except when acting as agent for FUND on repurchase of shares under Paragraph 2 hereof.

2. Sales of FUND's shares under this Agreement shall be handled by COMPANY as agent for FUND. With FUND's consent, COMPANY may also act as agent for FUND without commission on repurchase of shares of FUND. Except for such sales and repurchase of shares of FUND, COMPANY shall act as principal in all other matters relating to promotion of the growth of FUND and shall enter into all of its engagements, agreements and contracts as principal on its own account. Furthermore, this Agreement shall not be construed as authorizing any dealer or other person to act as agent, either of FUND or of COMPANY.

3. FUND covenants and agrees that it will, at its own expense:

(a) use its best efforts to keep authorized, but unissued, sufficient of its capital stock to meet the reasonable requirements of COMPANY;

(b) execute or cause to be executed all documents requiring signatures of FUND necessary to permit COMPANY to comply with the provisions of Paragraph 4 hereof;

(c) supply COMPANY with the "net asset value per share" computed as at the time(s) prescribed by and in compliance with all pertinent requirements of the National Association of Securities Dealers and the Securities and Exchange Commission, so as to permit COMPANY to comply with the provisions of Paragraph 4 hereof.

4. COMPANY covenants and agrees that it will, at its own expense:

(a) prepare, file and keep effective registration statements, prospectuses and licenses covering so many shares of stock of FUND as may be necessary to meet COMPANY's reasonable requirements for distribution and sale of such shares in all jurisdictions where shares of FUND may lawfully be sold;

(b) prepare as often as, and at the specific times, required by appropriate authority on each business day for publication in newspapers or other financial publications both the offering price to the public and the liquidation price of FUND shares;

(c) prepare, print and distribute (subject to the provisions of Paragraph 5 hereof) all advertising and sales literature relating to FUND.

5. (a) COMPANY does hereby covenant and agree that it will not issue any statements other than FUND's properly approved Prospectus, except such supplemental literature or advertising (prepared at the expense of COMPANY) as shall be lawful under state and federal securities laws and regulations and under applicable laws and regulations of foreign jurisdictions. COMPANY agrees to file with the Securities and Exchange Commission, the National Association of Securities Dealers, Inc. and such other regulatory authorities as may be required, copies of any advertisement, pamphlet, circular, form letter, or other sales literature relating to FUND or its shares, addressed to or intended for distribution to prospective investors, within the time required by such regulatory authorities, to furnish FUND at its principal office with a copy of all such material prior to its use and not to use such material if the FUND shall reasonably and promptly object to such use.

(b) COMPANY shall conform to all applicable By-Laws, charter provisions, and regulations to which FUND is subject and to applicable laws and regulations of the United States and of the individual states within which COMPANY or FUND may do business, or where shares of FUND are offered for sale, and will conduct its affairs both with relation to FUND and with relation to dealers, or investors, in accordance with the rules of fair practice of the National Association of Securities Dealers, Inc. COMPANY shall also comply with applicable laws and regulations of foreign

jurisdictions in which shares of FUND or securities of an investment company using shares of FUND as its sole underlying investment are offered.

(c) COMPANY agrees to indemnify and hold harmless FUND and each person who has been, is, or may hereafter be an officer or director of FUND against expenses reasonably incurred by any of them in connection with any claim or in connection with any action, suit or proceeding to which any of them may be a party, which arises out of, or is alleged to arise out of any wrongful act of COMPANY or its employees or any misrepresentation in the registration statement of FUND filed under the Securities Act of 1933 of a material fact, or out of any alleged omission to state therein a material fact necessary to make the statements made therein not misleading, insofar as any such statement or omission was made in reliance upon, and in conformity with, information furnished to FUND in connection therewith by, or in behalf of COMPANY, provided, however, that (i) in no case is the indemnity of COMPANY in favor of FUND or any person indemnified to be deemed to protect FUND or any such person against any liability to which FUND or any such person would otherwise be subject by reason of willful misfeasance, bad faith or gross negligence, in the performance of its duties or by reason of its reckless disregard of its obligation and duties under this agreement, and (ii) in no case is COMPANY to be liable under its indemnity agreement contained in this paragraph with respect to any claim made against FUND or any person indemnified, unless FUND or such person, as the case may be, shall have notified COMPANY in writing within a reasonable time after the summons or other first legal process giving information of the nature of the claim shall have been served upon FUND or upon such person (or after FUND or such person shall have received notice of such service on any designated agent). In the case of any such notice to COMPANY, COMPANY shall be entitled to participation, at its own expense, in the defense of any suit brought to enforce any such liability. COMPANY agrees promptly to notify FUND of the commencement of any litigation or proceedings against it in connection with the issue and sale of any of the shares. The term "expenses" includes amounts paid in satisfaction of judgments or in settlement. The foregoing right of indemnification shall be in addition to any other rights to

which FUND or any such officer or director may be entitled as a matter of law.

6. FUND covenants and agrees that it will not, during the term of this Agreement offer any of its shares for sale directly or through any person or corporation other than COMPANY, excepting only (a) the issuance of rights to stockholders to subscribe to shares to the extent of all or part of any dividend that may be distributed to stockholders of FUND or to the extent of any shares that may be taken up under an optional or alternative dividend, or the issuance of additional shares through stock splits or stock dividends, and (b) sales of shares to another investment or securities holding company in the process of converting all or a portion of its assets into shares of FUND or in connection with an issuance of FUND's shares in exchange for shares of another investment or securities holding company, to the extent permitted by the Investment Company Act of 1940, as from time to time amended. Provided, however, that in the event COMPANY should be unable to continue to distribute shares of FUND and such restriction shall not apply to the sale of shares of FUND by any other person, FUND may at its option make arrangements for the offer and sale of its shares within the jurisdiction or jurisdictions in which distribution and sale thereof by COMPANY has been prevented, provided, further however, that if COMPANY shall have removed all material obstacles to resuming the offer and sale within said jurisdictions within ninety days from its first restraint or inability, then the right of FUND to distribute through instrumentalities other than COMPANY shall be extinguished, subject only to the provisions of Paragraph 8 hereof. FUND further agrees that COMPANY may act as principal underwriter and exclusive national distributor for the shares of other investment companies registered under Investment Company Act of 1940. FUND and COMPANY further agree that the shares of the FUND may be sold through COMPANY as agent for the FUND to any investment company which uses the shares of the FUND as its sole underlying investment, provided that such other investment company is sponsored by the COMPANY (or, if a United States investment company, sponsored by a distributor approved by the COMPANY), or by a wholly-owned subsidiary of the COMPANY and, provided further, that if such investment company is organized under

the laws of the United States or is designed to permit its securities to be sold to United States citizens or residents, it shall additionally register under the Investment Company Act of 1940, as from time to time amended.

7. It is hereby mutually agreed that COMPANY in full satisfaction of all services herein agreed to be performed by it shall receive a commission not to exceed 8½% of the offering price of all shares of FUND sold by it after the effective date hereof; provided, however, that the commission payable on separate volume and other special transactions shall be as from time to time set forth in the Prospectus of FUND then in effect, provided further that, if the Prospectus of the FUND so specifies, COMPANY shall receive no commission on sales of shares of FUND at net asset value to those persons described and on the terms provided in Rule 22d-1(h) promulgated under the Investment Company Act of 1940, as amended. The commissions aforesaid shall become due and owing immediately upon settlement for any sale made through COMPANY and COMPANY shall deduct such commissions from any remittance to FUND, provided, however, that if change is required in the aforesaid commissions, either by duly constituted regulatory authorities, or for business reasons, the amount payable to FUND from the sale of shares shall always equal the then current net asset value per share. COMPANY agrees that, if shares are repurchased by FUND or by COMPANY as agent for FUND, or are tendered to FUND for redemption within seven days after confirmation by COMPANY, as agent, of the original purchase order to any broker or dealer originating such transaction, COMPANY will immediately remit to FUND the commission (net of allowances of dealers or brokers) on such sale paid to COMPANY and will promptly, upon receipt thereof, pay to FUND any refunds of the balance of sales commissions repaid to COMPANY by brokers or dealers. Notwithstanding the foregoing, all sales of shares of FUND to any investment company in accordance with the provisions of Paragraph 6 of this Agreement as amended shall be made through COMPANY at net asset value, and no commissions shall be charged to, or paid by, such investment company with respect to such shares.

8. This Agreement shall become effective on April 1, 1973, and shall continue in force until March 31, 1975, and thereafter, only so long as such continuance is approved at

least annually thereafter by a vote of the Fund's Board of Directors, including the votes of a majority of the directors who are not parties to such Contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting such approval.

9. Subject to the provisions of the immediately preceding paragraph, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, provided, however, that this Agreement shall terminate automatically upon assignment by COMPANY as provided for and defined in the Investment Company Act of 1940 as amended, unless under the exemptive provisions of Section 6(c) of such Act, the Securities and Exchange Commission shall determine that a conditional or unconditional order of exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and practice of such Act; in which event this Agreement shall continue in full force and effect.

10. In the event that this Agreement, or any part thereof, shall become unlawful under any future law of the United States, or any state, territory, possession or district thereof, or any regulations of the United States, any state, territory, possession and district thereof, or any department, board or commission or other governmental authority having jurisdiction over its performance, such unlawful portion of the Agreement shall be considered as though it were deleted by mutual consent; but the remaining provisions of the Agreement shall not cease and terminate and the parties hereto shall confer and attempt to agree to such change or modification in the said Agreement as will cause it to conform to said law or regulation and will maintain the general purpose and provisions of this Agreement in a manner equitable to each of the parties hereto. If, in such event, the parties hereto are unable to agree with respect to the said modification, each shall promptly appoint one arbitrator and the two arbitrators so appointed shall appoint a third arbitrator, who shall consider all the facts and circumstances relating to this Agreement and to the necessary modification thereof to comply with such future law or regulation, and if, in the opinion of said arbitrators, or a majority of them, a modification of the said Agreement may be made which will comply with the said new law or regula-

tion and will maintain the general purposes of this Agreement and be fair and equitable to both of the parties hereto, they shall direct in what particulars this Agreement shall be modified and amended, and upon the receipt by each of the parties hereto of the written report of the arbitrators, the Agreement shall thereupon be deemed to be altered and amended as provided in the said report and as so altered and amended shall continue to be effective and binding on both of the parties hereto. The provisions of this Paragraph 10 shall be administered in accordance with provisions of the Act of Assembly of the Commonwealth of Pennsylvania, enacted April 25, 1927, P.L., 381 Number 248, as amended. Provided, however, that neither FUND, nor COMPANY, shall be bound to accept the directions of the arbitrators if the modification or amendment of the Agreement stated in the Arbitrators' written report would, in the opinion of counsel for FUND, require approval under the provisions of Section 15(c) of the Investment Company Act of 1940, as amended, and provided further that FUND reserves the right in the event of any award or decision by the arbitrators to call a special meeting of the stockholders of the FUND and to submit to the vote of the stockholders the question of whether the recommendations of the arbitrators shall or shall not be adopted by and binding upon the FUND, in which case the decision of the stockholders shall be final and binding upon FUND and COMPANY.

11. It is the intention of the parties hereto that this Agreement shall be governed and construed according to the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers and to have hereunto affixed their respective corporate seals this First day of April, 1973.

Attest: WELLINGTON FUND, INC.

By: _____

Secretary *President*

Attest: WELLINGTON MANAGEMENT COMPANY

By: _____

Secretary *President*

EXHIBIT B

WELLINGTON MANAGEMENT COMPANY
1630 LOCUST STREET • PHILADELPHIA, PA. 19103

Sales Agreement

with respect to

WELLINGTON FUND WINDSOR FUND IVEST FUND W. L. MORGAN GROWTH FUND WELLESLEY INCOME FUND EXPLORER FUND TRUSTEES' EQUITY FUND

Gentlemen:

As National Distributor for the shares of Wellington Fund, Windsor Fund, Ivest Fund, Explorer Fund, W. L. Morgan Growth Fund, Trustees' Equity Fund, Wellesley Income Fund, and any other mutual fund for which we may hereafter act as Distributor (the "Funds"), we invite you to become a member of the Selling Group to distribute the shares of said Funds upon the following terms:

Ordering of Shares

1. Orders received from you will be accepted by us for the Funds only at the public offering price applicable to each order, as established in accordance with the provisions of the then current Prospectus of each of the Funds. The procedure stated herein relating to the pricing and handling of orders shall be subject to instructions which we will forward from time to time to all members of the Selling Group. All orders are subject to acceptance or rejection by the Funds in their sole discretion.

2. You agree to purchase shares only from the Funds through us or from your customers. If you purchase shares from the Funds you agree that all such purchases shall be made only to cover orders already received by you from your customers (who may be any persons other than a securities dealer or broker), or for your own investment. If you purchase shares from your customers, you agree to pay such customers not less than the bid prices quoted by us as agent at the time of such purchase. As distributor,

we will not accept a conditional offer for shares of the Funds.

3. You agree to sell shares only

(a) as principal, for your own account, to customers at the public offering price then in effect;

(b) to the Funds through Wellington Management Company, as agent for the Funds at the net asset value next determined after our receipt of the request for repurchase of the shares subject to such procedural standards as may from time to time be established or approved by the appropriate regulatory agencies. In such a sale to the Funds you may act either as principal for your own account or as agent for your customer. If you act as principal for your own account, you agree to pay your customer (unless the shares are in your investment account) not less than the price so determined. If you act as agent for your customer in selling shares to the Funds you may charge a fair commission for handling the transaction. All transactions in shares of Funds between you and us are between us as agent for the Funds concerned and you, either as principal for your own account or as agent for an undisclosed principal.

Dealer Discount and Sales Charge

4. The shares of the Funds will be offered to the public at a public offering price which will include a sales charge in varying amounts depending on the size of the purchase or other circumstances as described in the then current Prospectus of each of the Funds. On such sales you will receive a discount as shown in the following table (with the sales charge and discount stated as a percentage of the applicable offering price).

Amount of Sale	Gross Sales Charge	Dealer Discount
Less than $10,000 *	8.50%	7.00%
$10,000 but under $25,000	7.75	6.25
$25,000 but under $50,000	6.00	4.50
$50,000 but under $100,000	4.50	3.50

* The minimum initial purchase for Explorer Fund is $5,000.

Amount of Sale	Gross Sales Charge	Dealer Discount
$100,000 but under $250,000	3.25	2.50
$250,000 but under $500,000	2.50	2.00
$500,000 but under $1,000,000	2.00	1.50
$1,000,000 but under $5,000,000	1.50	1.125
$5,000,000 and over	1.00	0.75

5. The Funds may change the amount of the gross sales charge or the dealer discount or both at any time upon written notice to you.

6. You shall not withhold placing with us orders received from your customers so as to profit yourself as a result of such withholding, nor shall we accept from you any order for shares on any basis other than in accordance with the rules for such orders as may, from time to time, be established by the appropriate regulatory agencies.

7. If any shares sold to you under the terms of this agreement are repurchased by the Funds or by Wellington Management Company for the account of the Funds, or are tendered for repurchase or redemption within seven business days after the date of the confirmation of the original purchase by you, it is agreed that you shall forfeit your right to any discount received by you on such shares.

We shall notify you of any such repurchase or redemption within ten business days from the date on which the certificate is delivered to Wellington Management Company, or to the Funds and you shall forthwith refund to us the full discount allowed to you on such sale. We agree, in the event of any such repurchase or redemption, to refund to the Funds our share of the sales charge and upon receipt from you of the refund of the discount allowed to you, to pay such refund forthwith to the Funds.

8. Notwithstanding any of the foregoing provisions, orders to purchase shares received by us in connection with any exchange privilege made available to the shareholders of the respective Funds will be at the public offering price less all sales charges as applicable to each order and established by the then effective Prospectus of the Fund concerned. Orders to redeem shares under such exchange privilege shall not be subject to commission charge by either you or us.

Payment and Delivery

9. Orders and confirmation should be sent directly to Wellington Management Company, 1630 Locust Street, Philadelphia, Pa. 19103. Payment for shares shall be made payable to the order of Wellington Management Company and sent to the Funds' Transfer Agent, Data-Sys-Tance, Inc., P. O. Box 1400, Kansas City, Mo. 64141. The Funds reserve the right to delay issuance or transfer until the check is cleared. Payment shall be received by us within five days after acceptance by us for the Funds of your order. If such payment is not so received we reserve the right, without notice, forthwith to cancel the sale, and we may hold you responsible for any loss, including loss of profit, suffered by us or by the Funds resulting from your failure to make such payment.

10. No person is authorized to make any representations concerning shares of the Funds except those contained in the then current Prospectus of each of the Funds and in printed information subsequently issued by each of the Funds as information supplemental to such Prospectus. In all sales of these shares to the public you shall act as dealer for your own account, and in no transaction shall you have any authority to act as agent for the Funds for us or for any other member of the Selling Group. In purchasing shares from us you shall rely solely on the representations contained in the Prospectus of each of the Funds concerned and supplemental information above mentioned.

11. Additional copies of the then current Prospectus for each of the Funds and any printed information issued as supplemental to such Prospectus will be supplied by us in reasonable quantities upon request.

12. The Funds reserve the right in their own discretion, without notice, at any time and from time to time, to suspend sales or withdraw the offering of shares entirely. We reserve the right to amend this Agreement, and to reject in whole or in part any order received by us from you. Either party hereto may cancel this Agreement at any time. All purchase orders received by us will be subject to receipt of shares by us from the Fund concerned.

13. Each of us hereby represents and agrees that each of us is and will continue to be during the life of this Agreement a member of the National Association of Securities Dealers, Inc., or that we are a foreign dealer and we are

not eligible for membership in said Association, and in any event we both hereby agree to abide by the Rules of Fair Practice of that Association.

14. All communications to us should be sent to the above address. Any notice to you shall be duly given if mailed or telegraphed to you at the address specified by you below. This Agreement shall be construed in accordance with the laws of Pennsylvania.

15. Your first order placed with us for the purchase of shares of any of the Funds will represent your acceptance of this Agreement.

WELLINGTON MANAGEMENT COMPANY
By William G. Gallagher
Senior Vice President—Sales

Please return one signed copy of this agreement to:
Wellington Management Company
Order Department
1630 Locust Street
Philadelphia, Pa. 19103

Accepted:

Firm Name: .....
By: .....
Address: .....
.....
Date: .....

ANSWER OF DEFENDANT BACHE & CO., ET AL.

(Title Omitted in Printing)

ANSWER OF:
BACHE & CO. INCORPORATED, et al.

Defendants Bache & Co. Incorporated; Dean Witter & Co. Incorporated; duPont Glore Forgan Incorporated; E. F. Hutton & Company Inc.; Hornblower & Weeks-Hemphill, Noyes Incorporated; Merrill Lynch, Pierce, Fenner & Smith Inc.; Paine, Webber, Jackson & Curtis Incorporated; Reynolds Securities Inc.; and Walston & Co. Inc. (hereinafter referred to for purposes of this answer as "defendant dealers") by their attorneys, Hogan & Hartson, answer the complaint in the above-captioned action as follows:

First Defense

1. Defendant dealers deny that this action is instituted to prevent or restrain violations of the law or to enforce the law and allege that, on the contrary, this action is instituted by the Department of Justice to change the law and is an effort by the Department of Justice to attain legislative objectives by means of litigation.

2. The acts and practices of defendant dealers in the distribution, sale, purchase, and redemption of redeemable investment company securities are, have been, and were intended to be honest, open, and public efforts to comply with the letter and spirit of the laws of the United States, including the statute which makes it a federal criminal offense for such dealers to sell any such securities to any person except a dealer, a principal underwriter or the issuer, except at a current public offering price described in the prospectus. Defendant dealers have operated in accordance with their understanding that those laws and that statute do not permit evasion or avoidance by any sham, artifice, or convenient choice of words to describe the capacity in which they deal in redeemable investment company securities. Defendants allege and aver that their understanding is and has been the general understanding of the securities industry and its related legal community, as promoted, shared, and acquiesced in for more than three decades by the United States Congress and the Securities and Exchange Commission, among others.

3. Since each of the defendant dealers has individually and in good faith sought to obey the letter and spirit of the

law with respect to the acts and practices referred to in the complaint, even if the Court should interpret the law differently than the defendant dealers, the securities industry, the government, and the public have been interpreting the law for more than 30 years since enactment of the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.*, the course of conduct and acts of the defendant dealers referred to in the complaint do not indicate any intent or tendency to disregard the law. On the contrary, the course of conduct and acts of defendant dealers demonstrate a scrupulous regard for the law and an effort to comply fully with its letter and spirit. Accordingly, there is no basis, ground, or warrant for the entry of any injunction or order against the defendant dealers or for the granting of any relief herein against the defendant dealers.

Second Defense

(As to Jurisdiction and Venue)

4. In answer to paragraph 1 of the complaint, defendant dealers deny each and every allegation therein, except that they admit that the Act of Congress of July 2, 1890, 15 U.S.C. §§ 1 *et seq.*, as amended, is commonly known as the Sherman Act.

5. In answer to paragraph 2 of the complaint, defendant dealers admit that each defendant dealer transacts business or is found within the District of Columbia. Defendant dealers are without knowledge or information sufficient to enable them to affirm or deny that each of the other defendants named in each of the counts of the complaint does or does not transact business within the District of Columbia or is or is not found within the District of Columbia.

(As to Definitions)

6. In answer to paragraph 3(a) of the complaint, defendant dealers admit that the term "investment company" is defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 80a-3, that the term "management company" is defined in section 4(3) of that Act, 15 U.S.C. § 80a-4(3), and that the term "open-end company" is defined in section 5(a)(1) of that Act, 15 U.S.C. § 80a-5(a)(1). Defendant dealers deny that the term "mutual fund" is defined in the Investment Company Act of 1940. They further deny that it is either statutorily correct, proper,

or helpful to define a "mutual fund" as meaning "an open-end management investment company." They admit that plaintiff has attempted to construct and use such a definition in the complaint.

7. In answer to paragraph 3(b) of the complaint, defendant dealers admit that the term "principal underwriter" is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(29), but deny that that definition employs the term "mutual fund." They admit that plaintiff has attempted to construct and use such a definition in the complaint.

8. In answer to paragraph 3(c) of the complaint, defendant dealers deny that the term "broker/dealer" is defined in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, the Securities Act of 1933, 15 U.S.C. §§ 77a *et seq.*, the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.*, or any of the other securities statutes of the United States. Defendant dealers admit that plaintiff has attempted to construct and use such a definition in the complaint. Defendant dealers admit that each is registered with the Securities and Exchange Commission as required by section 15 of the Securities Exchange Act of 1934, 15 U.S.C. § 78o.

9. In answer to paragraphs 3(d) and 3(e) of the complaint, defendant dealers deny that the terms "brokerage transaction" and "dealer transaction" are defined or used in the Investment Company Act of 1940. Defendant dealers admit that plaintiff has attempted to construct definitions of such terms in the complaint. Defendant dealers allege and aver that the use and juxtaposition of these terms in the complaint is misleading, confusing, and contrary to the intent of Congress as expressed in 1940 when Congress passed the Investment Company Act.

10. In answer to paragraphs 3(f)(g) and (h) of the complaint, defendant dealers deny that the terms "primary distribution system," "secondary dealer market," and "brokerage market" are defined or used in the Investment Company Act of 1940. Defendant dealers admit that plaintiff has attempted to construct and use such definitions in the complaint. Defendant dealers allege and aver that the use and juxtaposition of such terms in the complaint is misleading, confusing, and contrary to the intent of Congress as expressed in 1940 when Congress passed the Investment Company Act.

(As to Count I)

11. Defendant dealers are without knowledge or information sufficient to enable them to affirm or deny the allegations of paragraphs 4, 5, and 6 of the complaint, except that they admit that The Crosby Corporation is the principal underwriter of certain "Fidelity" funds, Vance, Sanders & Company is the principal underwriter of certain "Vance, Sanders" funds, and the Wellington Management Company is the principal underwriter of certain "Wellington" funds.

12. Subject to its answer made in response to paragraph 3 of the complaint, which answer is incorporated herein by reference, each defendant dealer admits, as to itself, that it is a corporation and has a principal office in the city indicated by paragraph 7 of the complaint, and avers, upon information and belief, that the allegations of that paragraph are true as to each other defendant dealer. Each defendant dealer avers, however, that its corporate name is as appears in the preamble paragraph on the first page of this answer. To the extent that the dealer names alleged in plaintiff's complaint are inconsistent with the names used in this answer, defendant dealers deny that the names alleged in the complaint are correct.

13. Defendant dealers admit the allegations of paragraph 8 of the complaint subject to their answer made in response to paragraph 3 of the complaint, which answer is incorporated herein by reference.

14. Defendant dealers admit the allegations of paragraph 9 of the complaint subject to their answer made in response to paragraph 3 of the complaint, which answer is incorporated herein by reference.

15. Defendant dealers lack knowledge or information sufficient to enable them to affirm or deny the allegations of paragraph 10 of the complaint.

16. Defendant dealers admit the allegations of paragraph 11 of the complaint subject to their answer made in response to paragraph 3 of the complaint, which answer is incorporated herein by reference.

17. Defendant dealers admit the allegation in the first sentence of paragraph 12 of the complaint subject to their answer made in response to paragraph 3 of the complaint, which answer is incorporated herein by reference. Defendant dealers are without knowledge or information sufficient

to enable them to affirm or deny the remaining allegations in paragraph 12 of the complaint.

18. In answer to paragraph 13 of the complaint, defendant dealers deny that Section 22(d) of the Investment Company Act of 1940, 15 U.S.C. § 80a-22(d), uses the terms "broker/dealer," "dealer transaction," or "mutual fund." Any characterization of that section to the contrary is completely misleading and totally unfounded. Section 22(d) reads, in full, as follows:

> (d) No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Nothing in this subsection shall prevent a sale made (i) pursuant to an offer of exchange permitted by section 11 including any offer made pursuant to section 11(b); (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash distribution made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 12.

19. In answer to paragraph 14 of the complaint, defendant dealers deny that the securities laws in general, or the Investment Company Act of 1940 in particular, define and use the terms "brokerage transaction" and "dealer transaction." Defendant dealers further deny that section 22(d) of the Investment Company Act uses the term "broker/dealer." Any characterization of that section to the contrary is completely misleading and totally unfounded. Defendant dealers deny each and every other allegation in paragraph 14 of the complaint.

20. Defendant dealers deny each and every allegation in paragraphs 15 and 16 of the complaint.

21. Defendant dealers admit that defendant NASD has issued rules and regulations governing the activities of its membership, which rules were duly promulgated pursuant to authority granted by Congress in the various federal securities statutes and approved, acknowledged, and acquiesced in by the Securities and Exchange Commission. Defendant dealers deny each and every other allegation in paragraphs 17 and 18 of the complaint.

(As to Count II)

22. The allegations in paragraphs 19 and 20 of the complaint are formal allegations to which no answer is necessary.

23. In answer to paragraph 21 of the complaint, defendant dealers reallege in full their answers to paragraphs 9 through 14 of the complaint and incorporate those answers herein by reference.

24. In answer to paragraph 22 of the complaint, each defendant dealer admits that it has signed a standard form dealer agreement furnished to it by defendant The Crosby Corporation. Attached hereto as "Exhibit A" is a specimen of such standard form agreement. Upon information and belief, each defendant dealer alleges and avers that each other defendant dealer has signed such a standard form agreement, as have non-defendant dealers. Defendant dealers deny that such agreements are in unreasonable restraint of trade and commerce, deny that such agreements are in violation of the antitrust laws, and deny each and every other allegation of paragraph 22 of the complaint.

25. In answer to paragraph 23 of the complaint, each defendant dealer alleges and avers that the terms of the standard form agreement furnished to it by The Crosby Corporation are set forth in that agreement. Defendant dealers deny each and every other allegation of paragraph 23 of the complaint.

26. Defendant dealers deny each and every allegation of paragraph 24 of the complaint.

(As to Count III)

27. Many of the allegations of paragraphs 25 and 26 are formal allegations to which no answer is required. Defendant dealers are without knowledge or information sufficient to enable them to affirm or deny any non-formal allegations of paragraphs 25 and 26 of the complaint.

28. In answer to paragraph 27 of the complaint, defendant dealers reallege in full their answers to paragraphs 9 through 14 of the complaint and incorporate those answers herein by reference.

29. Defendant dealers are without knowledge or information sufficient to enable them to affirm or deny the allegations of paragraphs 28 through 30 of the complaint.

(As to Count IV)

30. The allegations of paragraphs 31 and 32 of the complaint are formal allegations to which no answer is required.

31. In answer to paragraph 33 of the complaint, defendant dealers reallege in full their answers to paragraphs 9 through 14 of the complaint and incorporate those answers herein by reference.

32. In answer to paragraph 34 of the complaint, each defendant dealer admits that it has signed a standard form dealer agreement furnished to it by defendant Vance, Sanders and Company, Inc. Attached hereto as "Exhibit B" is a specimen of such standard form agreement. Upon information and belief, each defendant dealer alleges and avers that each other defendant dealer has signed such a standard form agreement, as have non-defendant dealers. Defendant dealers deny that such agreements are in unreasonable restraint of trade and commerce, deny that such agreements are in violation of the antitrust laws, and deny each and every other allegation of paragraph 34 of the complaint.

33. In answer to paragraph 35 of the complaint, each defendant dealer alleges and avers that the terms of the standard form agreement furnished to it by Vance, Sanders and Company, Inc., are set forth in such agreement. Defendant dealers deny each and every other allegation of paragraph 35 of the complaint.

34. Defendant dealers deny each and every allegation of paragraph 36 of the complaint.

(As to Count V)

35. Many of the allegations of paragraph 37 of the complaint are formal allegations to which no answer is required. Defendant dealers are without knowledge or information sufficient to enable them to affirm or deny the non-formal allegations of paragraph 37 of the complaint.

36. The allegations of paragraph 38 of the complaint are formal allegations to which no answer is required.

37. In answer to paragraph 39 of the complaint, defendant dealers reallege in full their answers to paragraphs 9 through 14 of the complaint and incorporate those answers herein by reference.

38. Defendant dealers are without knowledge or information sufficient to enable them to affirm or deny the allegations of paragraphs 40 through 42 of the complaint.

(As to Count VI)

39. The allegations of paragraphs 43 and 44 of the complaint are formal allegations to which no answer is required.

40. In answer to paragraph 45 of the complaint, defendant dealers reallege in full their answers to paragraphs 9 through 14 of the complaint and incorporate those answers herein by reference.

41. In answer to paragraph 46 of the complaint, each defendant dealer admits that it has signed a standard form dealer agreement furnished to it by defendant Wellington Management Company. Attached hereto as "Exhibit C" is a specimen of such standard form agreement. Upon information and belief, each defendant dealer alleges and avers that each other defendant dealer has signed such a standard form agreement, as have non-defendant dealers. Defendant dealers deny that such agreements are in unreasonable restraint of trade and commerce, deny that such agreements are in violation of the antitrust laws, and deny each and every other allegation of paragraph 46 of the complaint.

42. In answer to paragraph 47 of the complaint, each defendant dealer alleges and avers that the terms of the standard form agreement furnished to it by The Crosby Corporation are set forth in such agreement. Defendant dealers deny each and every other allegation of paragraph 47 of the complaint.

43. Defendant dealers deny each and every allegation of paragraph 48 of the complaint.

(As to Count VII)

44. Many of the allegations in paragraph 49 and all of the allegations in paragraph 50 of the complaint are formal allegations to which no answer is required. Defendant dealers are without knowledge or information sufficient to enable

them to affirm or deny the non-formal allegations of paragraph 49 of the complaint.

45. In answer to paragraph 51 of the complaint, defendant dealers reallege in full their answers to paragraphs 9 through 14 of the complaint and incorporate those answers herein by reference.

46. Defendant dealers are without knowledge or information sufficient to enable them to affirm or deny the allegations of paragraphs 52 through 54 of the complaint.

(As to Count VIII)

47. The allegations in paragraph 55 of the complaint are formal allegations to which no response is required.

48. In answer to paragraph 56 of the complaint, defendant dealers reallege their answers to paragraphs 9 through 14 of the complaint and incorporate those answers herein by reference.

49. In answer to paragraph 57 of the complaint, each defendant dealer admits that from time to time it has signed standard form dealer agreements furnished to it by principal underwriters other than defendant principal underwriters. Defendant dealers deny that such agreements are in unreasonable restraint of trade and commerce, deny that such agreements are in violation of the antitrust laws, and deny each and every other allegation in paragraph 57 of the complaint.

50. In answer to paragraph 58 of the complaint, defendant dealers allege and aver that the terms of such agreements are set forth in the standard form agreements themselves. A specimen of the standard form agreement used by each principal underwriter is on public file with the Securities & Exchange Commission in Washington, D.C., and is available there for plaintiff's inspection. Defendant dealers deny each and every other allegation of paragraph 58 of the complaint.

51. Defendant dealers deny each and every allegation of paragraph 59 of the complaint.

(As to all Counts)

Third Defense

52. The complaint fails to state a claim against any of defendant dealers upon which relief can be granted.

Fourth Defense

53. The court lacks jurisdiction over the subject matter of the claims alleged in this action.

Fifth Defense

54. All acts and practices of each of said defendant dealers in the distribution, sale, purchase, and redemption of redeemable investment company securities are and have been authorized by, mandated by, and done in full conformity with the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.*, and the other federal securities statutes, and accordingly, such acts and practices of said defendants are exempt and immune from any claim for violation of the federal antitrust laws.

Sixth Defense

55. All acts and practices of each of said defendant dealers in the distribution, sale, purchase, and redemption of redeemable investment company securities are and have been authorized by, mandated by, and done in full conformity with the rules, regulations, orders, and other communications issued by the Securities and Exchange Commission, which Commission, as duly authorized by Congress, has engaged in continuous and pervasive surveillance, supervision, regulation, and control of such acts and practices, and accordingly, such acts and practices of said defendants are exempt and immune from any claim for violation of the federal antitrust laws.

Seventh Defense

56. All acts and practices of each of said defendant dealers in the distribution, sale, purchase, and redemption of redeemable investment company securities are and have been authorized by, mandated by, and done in full conformity with the rules, regulations, orders, and other communications issued by the National Association of Securities Dealers, which Association, as duly authorized by Congress and kept under continuous and pervasive surveillance, supervision, regulation, and control by the Securities and Exchange Commission, has engaged in continuous and pervasive surveillance, supervision, regulation, and control of such acts and practices, and accordingly, such acts and prac-

tices of said defendants are exempt and immune from any claim for violation of the federal antitrust laws.

Eighth Defense

57. By reason of the authority vested in it under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.*, as amended, the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, as amended, and the other federal securities statutes, the Securities and Exchange Commission has exclusive jurisdiction to regulate those acts and practices which are the subject of the purported claims in this action.

Ninth Defense

58. Plaintiff has not exhausted its remedies, nor alleged any effort on its part, to obtain redress from the Securities and Exchange Commission for the claims alleged in the complaint or to obtain any regulation, ruling, order, or other action by the Securities and Exchange Commission with regard to the subjects raised in the complaint, and accordingly, the action should be dismissed.

Tenth Defense

59. By reason of the authority vested in it under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.*, as amended, the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, as amended, and the other federal securities statutes, the Securities and Exchange Commission has primary jurisdiction to regulate those acts and practices which are the subject of the purported claims in the complaint, and accordingly, this action should be dismissed or, at least, the Court should refuse to consider or otherwise proceed in this action until such time as the plaintiff has first obtained a hearing and an administrative decision by the Securities and Exchange Commission with regard to the subjects raised in the complaint.

Eleventh Defense

60. The Securities and Exchange Commission is presently conducting hearings and may subsequently attempt to make findings on some of the matters referred to in the complaint, and accordingly, this action is not ripe for judicial intervention or decision and should be dismissed.

WHEREFORE, each of said defendant dealers prays for

judgment dismissing the complaint herein, together with its costs, disbursements, and attorneys' fees.

HOGAN & HARTSON

By _____
Lee Loevinger

_____
Owen M. Johnson, Jr.

_____
David J. Saylor

HOGAN & HARTSON
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
202-298-5500

Attorneys for defendants,
Bache & Co. Incorporated
Dean Witter & Co. Incorporated
duPont Glore Forgan Incorporated
E. F. Hutton & Company Inc.
Hornblower & Weeks-Hemphill, Noyes Incorporated
Merrill Lynch, Pierce, Fenner & Smith Inc.
Paine, Webber, Jackson & Curtis Incorporated
Reynolds Securities Inc.
Walston & Co. Inc.

BROWN, WOOD, FULLER, CALDWELL & IVEY
One Liberty Plaza
New York, New York 10006

of counsel for defendant
Merrill Lynch, Pierce, Fenner & Smith Inc.

WEIL, GOTSCHAL & MANGES
767 Fifth Avenue
New York, New York 10022

of counsel for defendant
duPont Glore Forgan Incorporated

DATED: March 26, 1973

EXHIBIT A

SALES AGREEMENT

The Crosby Corporation,
Distributor
225 Franklin Street,
Boston, Mass. 02110
Executive Offices—
617-726-0400—Cable-
Crosfidel
Order Department—
617-742-5700—Teletype
710-321-0411

Fidelity Fund, Inc.
Fidelity Bond Debenture Fund, Inc.
Fidelity Capital Fund, Inc.
Fidelity Trend Fund, Inc.
Puritan Fund, Inc.
Salem Fund, Inc.
Everest Fund, Inc.

The Fidelity Group of Mutual Funds

November 1, 1972

Dear Sirs:

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders to you at the applicable public offering price computed as described in the applicable Fund's then currently effective Prospectus, less the Dealer Discount described below. The net asset value and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as folows (the percentage in each case being a percentage of the applicable public offering price):

	At least	But less than	Sales Charge Paid by Investor	Dealer Discount
On investments of	*	$ 10,000	8.5%	7.0%
On investments of	$ 10,000	25,000	8.0%	6.5%
On investments of	25,000	50,000	6.0%	4.8%
On investments of	50,000	100,000	4.5%	3.6%
On investments of	100,000	250,000	3.5%	2.8%
On investments of	250,000	500,000	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%
On investments over	1,000,000		1.0%	0.8%

* The minimum initial and subsequent investments must be as specified in the then currently effective applicable Fund Prospectus.

The schedule of sales charges and dealer discounts set forth above is applicable to purchases by "any person" (a) of a single Fund at any one time, or (b) in accordance with "Combined Purchase Privilege," "Cumulative Quantity Discount" and/or "Statement of Intention" as each of those terms is described in the then currently effective applicable Fund Prospectus. You must notify us of the total holdings, if applicable, of "any person" before he may avail himself of a reduced sales charge pursuant to the foregoing. Such notification, in writing, must be received by Crosby within four (4) business days of the placing of the order. An application form is available for this purpose. As used in this paragraph, "any person" means an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other like fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purpose of purchasing shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and

holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the applicable Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of confirmation you will pay promptly the net amount due as shown thereon. Payment should be made as follows:

The Crosby Corporation
Cash Clearing Department, 3rd Floor
Ten Post Office Square
Boston, Massachusetts 02109

FOR IDENTIFICATION PURPOSES ALL PAYMENTS AND TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100. WE RESERVE THE RIGHT TO HOLD YOU RESPONSIBLE FOR ANY LOSS WE MAY INCUR AS THE RESULT OF YOUR FAILURE TO MAKE ANY SUCH PAYMENTS.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the net asset value then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in

the then currently effective applicable Fund Prospectus), unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling to us for the account of an investor any shares of the appropriate Fund at the net asset value price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the dealer discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, as amended, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representations concerning the Funds other than those which are contained in the then currently effective applicable Fund Prospectus and in such other printed information as may be subsequently issued by us as information supplemental to such Prospectus or approved by us in writing for use in connection therewith. You will

EXHIBIT B

VANCE, SANDERS & COMPANY, INC.
111 Devonshire Street
Boston 02109

Boston Fund
Boston Common Stock Fund
Century Shares Trust
Massachusetts Capital Development Fund
Massachusetts Financial Development Fund
Massachusetts Income Development Fund
Massachusetts Investors Growth Stock Fund
Massachusetts Investors Trust
Vance, Sanders Special Fund

Dear Sirs:

We are the Principal Underwriter of the shares of Boston Fund, Inc., Boston Common Stock Fund, Inc., Century Shares Trust, Massachusetts Capital Development Fund, Inc., Massachusetts Financial Development Fund, Inc., Massachusetts Income Development Fund, Inc., Massachusetts Investors Growth Stock Fund, Inc., Massachusetts Investors Trust and Vance, Sanders Special Fund, Inc. and, as such, have the exclusive right to distribute shares of these Funds for resale. As principal, we offer to sell to you, as a member of the Selling Group, shares of each of these Funds upon the following terms and conditions:

1. In all sales of these shares to the public you shall act as dealer for your own account, and in no transaction shall you have any authority to act as agent for the issuer, for us or for any other member of the Selling Group.

2. Orders received from you will be accepted through us only at the public offering price applicable to each order, as established by the then current Prospectus of the Fund for whose shares the order is placed. The procedure relating to the handling of orders shall be subject to instructions which we shall forward from time to time to all members of the Selling Group. All orders are subject to acceptance or rejection by us in our sole discretion.

3. For a schedule of the offering prices of the shares of each of the Funds and of your discount with respect to the sale of shares of each of the Funds see the reverse side

not use the words "Fidelity Fund, Inc.," "Puritan Fund, Inc," "Fidelity Capital Fund, Inc.," "Fidelity Trend Fund, Inc.," "Salem Fund, Inc.," "Everest Fund, Inc.," "Fidelity Bond-Debenture Fund, Inc.," "Fidelity Group of Funds" or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent or representative of any of the Funds or of this Corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

This Agreement supersedes and cancels any prior agreement with respect to the sale of shares of any of the Funds for which we are the principal underwriter and we reserve the right to amend this Agreement at any time and from time to time or to terminate the same at any time.

We and/or the Funds in the Fidelity Group of Funds may at any time modify the sales charge and dealer discount to be paid in connection with the sale of shares of any of those Funds. In the event of any such change you agree that you will have no continuing claim to or vested interest in the level of sales charges or dealer discounts established by this Agreement as to any shares purchased subsequent to such change.

Very truly yours,
THE CROSBY CORPORATION
By .....

The undersigned hereby accepts this Agreement and agrees to abide by all of its terms and conditions.

Dated as of November 1, 1972

Firm .....
By .....
Authorized Signature
Address .....

hereof. The term "single transaction" shall have the same meaning as set forth in the current Prospectus of each Fund.

4. You agree to purchase shares only through us or from your customers other than dealers or brokers. If you purchase shares through us, you agree that all such purchases shall be made only to cover orders already received by you from your customers, or for your own bona fide investment. If you purchase shares from your customers, you agree to pay such customers not less than the bid price quoted by us as agent for the issuer at the time of such purchase.

5. You shall sell shares only

(a) to customers at the public offering price then in effect.

(b) to us or the Fund upon the terms and conditions set forth in the current Prospectus of each Fund. In such a sale, you may act either as principal for your own account or as agent for your customer. If you act as agent for your customer in selling shares, you agree not to charge your customer more than a fair commission for handling the transaction.

6. You shall not withhold placing through us orders received from your customers so as to profit yourself as a result of such withholding: e.g., by a change in the "net asset value" from that used in determining the offering price to your customers.

7. We will not accept from you any conditional orders or shares, except at a definite specified price.

8. If any shares sold to you under the terms of this agreement are repurchased by the issuer or by us as agent for any such Fund or are tendered for redemption, within seven business days after the date of our confirmation of the original purchase by you, it is agreed that you shall forfeit your right to any discount received by you on such shares.

We will notify you of any such repurchase or redemption within ten business days from the date on which the certificate is delivered to us or to the issuer, and you shall forthwith refund to us the full discount allowed to you, and we agree to pay such refund forthwith to the issuer.

9. Payment for shares ordered from us shall be in New York or Boston clearing house funds received by us within five days after our acceptance of your order. If such payment is not received by us, we reserve the right, without notice, forthwith to cancel the sale, or, at our option, to sell the shares ordered back to the issuer, in which latter case we may hold you responsible for any loss, including loss of profit, suffered by us resulting from your failure to make payment as aforesaid.

10. Shares sold to you hereunder shall be available to you for delivery against payment at the office of our agent, the New England Merchants National Bank, Mutual Funds Clearance Department, Boston, Massachusetts, unless other arrangements are made with us for delivery and payment.

11. No person is authorized to make any representations concerning shares of the issuer except those contained in the current Prospectus and in such printed information subsequently issued by us as information supplemental to such Prospectus. In purchasing shares through us you shall rely solely on the representations contained in the appropriate Prospectus and supplemental information above mentioned. Qualification of the shares of Boston Fund, Inc., Boston Common Stock Fund, Inc., Century Shares Trust, Massachusetts Capital Development Fund, Inc., Massachusetts Financial Development Fund, Inc., Massachusetts Income Development Fund, Inc., Massachusetts Investors Growth Stock Fund, Inc., Massachusetts Investors Trust and Vance, Sanders Special Fund, Inc. in the various states, including the filing of any state or further state notices respecting such shares, and any printed information which we furnish you other than the Funds' Prospectuses and periodic reports are our sole responsibility and not the responsibility of the respective Funds, and you agree that these Funds shall have no liability or responsibility to you in these respects.

12. Additional copies of any current Prospectus and any printed information issued as supplemental to such Prospectus will be supplied by us in reasonable quantities upon request.

13. We reserve the right in our discretion, without notice, to suspend sales or withdraw the offering of shares entirely. Each party hereto has the right to cancel this agreement upon notice to the other party.

14. You represent that you are a member of the National Association of Securities Dealers and we both hereby agree to abide by the Rules of Fair Practice of such Association.

15. All communications to us should be sent to the above

address. Any notice to you shall be duly given if mailed or telegraphed to you at the address specified by you below. This agreement shall be construed in accordance with the laws of Massachusetts.

16. This agreement supersedes and cancels any prior agreement with respect to the sale of shares of any of the aforementioned Funds.

17. You appoint the transfer agent for each Fund as your agent to execute the purchase transactions of shares of each Fund in accordance with the terms and provisions of any account, program, plan or service established or used by your customers and to confirm each purchase to your customers on your behalf, and you guarantee the legal capacity of your customers so purchasing such shares and any co-owners of such shares.

NOTE: The term "net asset value" as used in paragraphs 5 and 6 and on the schedule "Offering Prices" means "liquidating value" in the case of Boston Fund and Century Shares Trust.

VANCE, SANDERS & COMPANY, INC.
By John D. Wilson
President

Dated May 1, 1972

The undersigned hereby accepts the offer set forth in the above letter.

Firm .....
By .....
Authorized Representative
Address .....

OFFERING PRICES

In single transactions by you of shares of Boston Fund, Boston Common Stock Fund, Century Shares Trust, Massachusetts Capital Development Fund, Massachusetts Financial Development Fund, Massachusetts Income Development Fund, Massachusetts Investors Growth Stock Fund, Massachusetts Investors Trust or Vance, Sanders Special Fund involving: (1) less than $12,500, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .915, in each case determined in the manner and as of the time specified in the Prospectus; (2) $12,500 but less than $25,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .925; (3) $25,000 but less than $50,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .9125; (4) $50,000 but less than $100,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .96; (5) $100,000 but less than $250,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .9675; (6) $250,000 but less than $500,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .975; (7) $500,000 but less than $1,000,000, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .9775; and (8) $1,000,000 or more, the public offering price of each of these Funds will be fixed by dividing the "net asset value" per share by .9825.

DEALER DISCOUNTS

On the purchase of shares by you to cover a single transaction involving: (1) less than $12,500, you shall receive a discount from the applicable public offering price of 6.50% with respect to shares of Boston Fund, Boston Common Stock Fund, Century Shares Trust, Massachusetts Capital Development Fund, Massachusetts Financial Development Fund, Massachusetts Income Development Fund, Massachusetts Investors Growth Stock Fund, Massachusetts Investors Trust and Vance, Sanders Special Fund, except that in supplementary purchases of shares of any of these

Funds under the invest-by-mail program, you shall receive a discount from the applicable public offering price of 6.00% (except that on Dividend Reinvestments only, discounts of less than $5 will not be paid); (2) $12,500 but less than $25,000, you shall receive a discount from the applicable public offering price of 6.00%; (3) $25,000 but less than $50,000, you shall receive a discount from the applicable public offering price of 4.25%; (4) $50,000 but less than $100,000, you shall receive a discount from the applicable public offering price of 3.00%; (5) $100,000 but less than $250,000, you shall receive a discount from the applicable public offering price of 2.50%; (6) $250,000 but less than $500,000, you shall receive a discount from the applicable public offering price of 2.00%; (7) $500,000 but less than $1,000,000, you shall receive a discount from the applicable public offering price of 1.75% and (8) $1,000,000 or more, you shall receive a discount from the applicable public offering price of 1.25%.

EXHIBIT C

WELLINGTON MANAGEMENT COMPANY
1630 LOCUST STREET • PHILADELPHIA, PA. 19103

Sales Agreement

with respect to

WELLINGTON FUND WINDSOR FUND IVEST FUND W. L. MORGAN GROWTH FUND WELLESLEY INCOME FUND EXPLORER FUND TRUSTEES' EQUITY FUND

Gentlemen:

As National Distributor for the shares of Wellington Fund, Windsor Fund, Ivest Fund, Explorer Fund, W. L. Morgan Growth Fund, Trustees' Equity Fund, Wellesley Income Fund, and any other mutual fund for which we may hereafter act as Distributor (the "Funds"), we invite you to become a member of the Selling Group to distribute the shares of said Funds upon the following terms:

Ordering of Shares

1. Orders received from you will be accepted by us for the Funds only at the public offering price applicable to each order, as established in accordance with the provisions of the then current Prospectus of each of the Funds. The procedure stated herein relating to the pricing and handling of orders shall be subject to instructions which we will forward from time to time to all members of the Selling Group. All orders are subject to acceptance or rejection by the Funds in their sole discretion.

2. You agree to purchase shares only from the Funds through us or from your customers. If you purchase shares from the Funds you agree that all such purchases shall be made only to cover orders already received by you from your customers (who may be any persons other than a securities dealer or broker), or for your own investment. If you purchase shares from your customers, you agree to pay such customers not less than the bid prices quoted by us as agent at the time of such purchase. As distributor, we will not accept a conditional offer for shares of the Funds.

3. You agree to sell shares only

(a) as principal, for your own account, to customers at the public offering price then in effect;

(b) to the Funds through Wellington Management Company, as agent for the Funds at the net asset value next determined after our receipt of the request for repurchase of the shares subject to such procedural standards as may from time to time be established or approved by the appropriate regulatory agencies. In such a sale to the Funds you may act either as principal for your own account or as agent for your customer. If you act as principal for your own account, you agree to pay your customer (unless the shares are in your investment account) not less than the price so determined. If you act as agent for your customer in selling shares to the Funds you may charge a fair commission for handling the transaction. All transactions in shares of Funds between you and us are between us as agent for the Funds concerned and you, either as principal for your own account or as agent for an undisclosed principal.

Dealer Discount and Sales Charge

4. The shares of the Funds will be offered to the public at a public offering price which will include a sales charge in varying amounts depending on the size of the purchase or other circumstances as described in the then current Prospectus of each of the Funds. On such sales you will receive a discount as shown in the following table (with the sales charge and discount stated as a percentage of the applicable offering price).

Amount of Sale	Gross Sales Charge	Dealer Discount
Less than $10,000 *	8.50%	7.00%
$10,000 but under $25,000	7.75	6.25
$25,000 but under $50,000	6.00	4.50
$50,000 but under $100,000	4.50	3.50
$100,000 but under $250,000	3.25	2.50
$250,000 but under $500,000	2.50	2.00
$500,000 but under $1,000,000	2.00	1.50
$1,000,000 but under $5,000,000	1.50	1.125
$5,000,000 and over	1.00	0.75

* The minimum initial purchase for Explorer Fund is $5,000.

5. The Funds may change the amount of the gross sales charge or the dealer discount or both at any time upon written notice to you.

6. You shall not withhold placing with us orders received from your customers so as to profit yourself as a result of such withholding, nor shall we accept from you any order for shares on any basis other than in accordance with the rules for such orders as may, from time to time, be established by the appropriate regulatory agencies.

7. If any shares sold to you under the terms of this agreement are repurchased by the Funds or by Wellington Management Company for the account of the Funds, or are tendered for repurchase or redemption within seven business days after the date of the confirmation of the original purchase by you, it is agreed that you shall forfeit your right to any discount received by you on such shares.

We shall notify you of any such repurchase or redemption within ten business days from the date on which the certificate is delivered to Wellington Management Company, or to the Funds and you shall forthwith refund to us the full discount allowed to you on such sale. We agree, in the event of any such repurchase or redemption, to refund to the Funds our share of the sales charge and upon receipt from you of the refund of the discount allowed to you, to pay such refund forthwith to the Funds.

8. Notwithstanding any of the foregoing provisions, orders to purchase shares received by us in connection with any exchange privilege made available to the shareholders of the respective Funds will be at the public offering price less all sales charges as applicable to each order and established by the then effective Prospectus of the Fund concerned. Orders to redeem shares under such exchange privilege shall not be subject to commission charge by either you or us.

Payment and Delivery

9. Orders and confirmation should be sent directly to Wellington Management Company, 1630 Locust Street, Philadelphia, Pa. 19103. Payment for shares shall be made payable to the order of Wellington Management Company and sent to the Funds' Transfer Agent, Data-Sys-Tance, Inc., P. O. Box 1400, Kansas City, Mo. 64141. The Funds reserve the right to delay issuance or transfer until the check is cleared. Payment shall be received by us within

five days after acceptance by us for the Funds of your order. If such payment is not so received we reserve the right, without notice, forthwith to cancel the sale, and we may hold you responsible for any loss, including loss of profit, suffered by us or by the Funds resulting from your failure to make such payment.

10. No person is authorized to make any representations concerning shares of the Funds except those contained in the then current Prospectus of each of the Funds and in printed information subsequently issued by each of the Funds as information supplemental to such Prospectus. In all sales of these shares to the public you shall act as dealer for your own account, and in no transaction shall you have any authority to act as agent for the Funds for us or for any other member of the Selling Group. In purchasing shares from us you shall rely solely on the representations contained in the Prospectus of each of the Funds concerned and supplemental information above mentioned.

11. Additional copies of the then current Prospectus for each of the Funds and any printed information issued as supplemental to such Prospectus will be supplied by us in reasonable quantities upon request.

12. The Funds reserve the right in their own discretion, without notice, at any time and from time to time, to suspend sales or withdraw the offering of shares entirely. We reserve the right to amend this Agreement, and to reject in whole or in part any order received by us from you. Either party hereto may cancel this Agreement at any time. All purchase orders received by us will be subject to receipt of shares by us from the Fund concerned.

13. Each of us hereby represents and agrees that each of us is and will continue to be during the life of this Agreement a member of the National Association of Securities Dealers, Inc., or that we are a foreign dealer and we are not eligible for membership in said Association, and in any event we both hereby agree to abide by the Rules of Fair Practice of that Association.

14. All communications to us should be sent to the above address. Any notice to you shall be duly given if mailed or telegraphed to you at the address specified by you below. This Agreement shall be construed in accordance with the laws of Pennsylvania.

15. Your first order placed with us for the purchase of

shares of any of the Funds will represent your acceptance of this Agreement.

WELLINGTON MANAGEMENT COMPANY
By William G. Gallagher
Senior Vice President—Sales

Please return one signed copy of this agreement to:
Wellington Management Company
Order Department
1630 Locust Street
Philadelphia, Pa. 19103

Accepted:

Firm Name: .....

By: .....

Address: .....

.....

Date: .....

(Certificate of service omitted in printing)

(Title Omitted in Printing)

MOTION TO DISMISS

Defendant National Association of Securities Dealers, Inc., pursuant to Rule 12 of the Federal Rules of Civil Procedure, moves this Court to dismiss the Complaints herein for failure to state a claim upon which relief can be granted and because this Court lacks jurisdiction over the subject matter. The Securities Exchange Act of 1934 and the Investment Company Act of 1940 provide immunity from the antitrust laws and confer exclusive jurisdiction upon the Securities and Exchange Commission, as more fully discussed in a memorandum submitted herewith. If the Court is unable to grant the motion to dismiss, the matters should be referred to the Securities and Exchange Commission pursuant to its primary jurisdiction.

Respectfully submitted,

/s/ Joseph B. Levin
JOSEPH B. LEVIN
Lund Levin & O'Brien
1625 I Street, N.W.
Washington, D C 20006
202-347-4377

/s/ Lloyd J. Derrickson
LLOYD J. DERRICKSON
General Counsel

/s/ Dennis C. Hensley
DENNIS C. HENSLEY
Assistant General Counsel
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D. C.
202-833-7200

Attorneys for Defendant National Association of Securities Dealers, Inc.

29 May 1973

(Title Omitted in Printing)

SIRS:

PLEASE TAKE NOTICE that, upon the annexed affidavits of John Barnard, Jr. and Thomas Otis, the annexed statement pursuant to General Rule 9(h) and the pleadings and prior proceedings herein, the undersigned hereby move for an order, pursuant to Rules 12(b)(6) and/or 56(b) of the Federal Rules of Civil Procedure, dismissing the complaint herein as to Massachusetts Investors Growth Stock Fund, Inc. ("MIGS") on the grounds that the only "violation" alleged against MIGS by the complaint herein is patently untrue and unsupportable on its face and that the practices and transactions complained of against the several defendants are exempted from the antitrust laws, and for such further relief as to the Court may seem just and proper.

Yours, etc.
SULLIVAN & CROMWELL

By _____
(A Member of the Firm)

48 Wall Street
New York, New York 10005
(212) HA 2-8100

and

WILLIAMS, CONNOLLY & CALIFANO

By _____

1000 Hill Building
839 Seventeenth Street., N.W.
Washington, D.C. 20006
(202) 638-6565

Attorneys for defendant
Massachusetts Investors Growth
Stock Fund, Inc.

(Certificate of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, PLAINTIFF, —against— THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., et al., DEFENDANTS.	Civ. Action No. 338-73 AFFIDAVIT OF JOHN BARNARD, JR.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK } ss.:

JOHN BARNARD, JR., being duly sworn, deposes and says:

1. I am an attorney and am a Vice President and Director of Massachusetts Investors Growth Stock Fund, Inc. ("MIGS").

2. MIGS' principal underwriter is Vance, Sanders & Company, Inc. ("Vance, Sanders"). A copy of the distribution agreement between MIGS and Vance, Sanders is annexed hereto as Exhibit A. This agreement, together with a letter of instructions with respect to redemptions (Exhibit B) and an exchange agreement among Vance, Sanders, MIGS and four other mutual funds whose shares Vance, Sanders distributes (Exhibit C), constitutes the entire agreement between MIGS and Vance, Sanders with respect to the purchase, sale and redemption of MIGS shares; there are no oral agreements. Vance Sanders has been free at all times to conduct its business as it wishes. There are no provisions, explicit or otherwise, which prohibit Vance, Sanders from executing brokerage transactions in MIGS shares.

3. Neither MIGS nor its investment advisor, Massachusetts Financial Services, Inc., is affiliated with Vance, Sanders in any way except for MIGS' use of Vance, Sanders as its principal underwriter. MIGS has, in fact, for reasons wholly unrelated to this litigation, given notice, effective June 30, 1973, of the termination of its distribution agreement with Vance, Sanders (Exhibit D).

/s/ John Barnard, Jr.
JOHN BARNARD, JR.

(Jurat Omitted in Printing)

DISTRIBUTION AGREEMENT

AGREEMENT made this twenty-first day of November, 1969, between Massachusetts Investors Growth Stock Fund, Inc., a Massachusetts corporation having principal place of business in Boston in the Commonwealth of Massachusetts, hereinafter called the "Fund", and Vance, Sanders & Company, Inc., a Maryland corporation having its principal place of business in said Boston, hereinafter sometimes called the "Principal Underwriter";

WHEREAS the Fund and the Principal Underwriter desire to replace the existing Agreement between them dated January 17, 1969, with a new Agreement;

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, the parties hereto agree:

1. The Fund grants to the Principal Underwriter the right to purchase shares of the Fund upon the terms hereinbelow set forth during the term of this Agreement. While this Agreement is in force, the Principal Underwriter agrees to use its best efforts to find purchasers for shares of the Fund.

The Principal Underwriter shall have the right to buy from the Fund the shares needed, but not more than the shares needed (except for clerical errors and errors of transmission) to fill unconditional orders for shares of the Fund placed with the Principal Underwriter by dealers or investors as set forth in the current prospectus relating to shares of the Fund. The price which the Principal Underwriter shall pay for the shares so purchased from the Fund shall be the net asset value used in determining the public offering price on which such orders were based. The Principal Underwriter shall notify the State Street Bank and Trust Company, Custodian and Agent of the Fund, at the end of each business day, or as soon thereafter as the orders placed with it have been compiled, of the number of shares and the prices thereof which the Principal Underwriter is to purchase as principal for resale. The Principal Underwriter shall take down and pay for shares ordered from the Fund on or before the seventh business day (excluding Saturdays) after the shares have been so ordered.

The right granted to the Principal Underwriter to buy shares from the Fund shall be exclusive, except that said

exclusive right shall not apply to shares issued in connection with the merger or consolidation of any other investment company or personal holding company with the Fund or the acquisition by purchase or otherwise of all (or substantially all) the assets or the outstanding shares of any such company, by the Fund; nor shall it apply to shares issued by the Fund in distribution of realized capital gains of the Fund payable in shares or in cash at the option of the shareholder.

2. The shares may be resold by the Principal Underwriter to dealers having sales agreements with the Principal Underwriter, and to investors, upon the following terms and conditions:

The public offering price, i.e., the price per share at which the Principal Underwriter or dealer purchasing shares from the Principal Underwriter may sell shares to the public, shall be the public offering price as set forth in the current Prospectus relating to said shares, but not to exceed the net asset value at which the Principal Underwriter is to purchase the shares, plus a sales charge not to exceed 8.5% of the public offering price (the net asset value divided by .915). If the resulting public offering price does not come out to an even cent, the public offering price shall be adjusted to the nearest cent.

The Principal Underwriter may also sell shares to Directors, officers and full-time employees of the Fund or of the Principal Underwriter or of any investment adviser of the Fund who have been such for 90 days, or to any trust, pension, profit-sharing or other benefit plan for such persons at the net asset value at which the Principal Underwriter is to purchase the shares (as established pursuant to paragraph 1 above) if the purchaser from the Principal Underwriter represents in writing that the shares are being acquired for investment purposes and agrees that such shares will not be resold except to the Fund.

The net asset value of shares of the Fund shall be determined by the Fund or State Street Bank and Trust Company as the agent of the Fund, as of the close of the New York Stock Exchange on each business day on which said Exchange is open, in accordance with the method set forth in the governing instruments (as hereinafter defined) of the Fund. The Fund may also cause the net asset value to be determined in substantially the same manner or estimated in such manner and as of such other hour or hours as may from time to time be agreed upon in writing by the Fund and Principal Underwriter. The Fund shall have the right to suspend the sale of its shares if, because of some extraordinary condition, the New York Stock Exchange shall be closed, or if, in the judgment of a majority of the members of the Investment Management Committee of the Board of Directors of the Fund, conditions obtaining during the hours when said Exchange is open render such action advisable.

3. The Fund agrees that it will, from time to time, but subject to the necessary approval of the shareholders, take all necessary action to fix the number of authorized shares and such steps as may be necessary to register the same under the Federal Securities Act of 1933 (as amended from time to time) to the end that there will be available for sale such number of shares as the Principal Underwriter may reasonably be expected to sell. The Fund agrees to indemnify and hold harmless the Principal Underwriter and each person, if any, who controls the Principal Underwriter within the meaning of Section 15 of the Securities Act of 1933 against any loss, liability, claim, damages or expense (including the reasonable cost of investigating or defending any alleged loss, liability, claim, damages or expense and reasonable counsel fees incurred in connection therewith), arising by reason of any person acquiring any shares, which may be based upon the Securities Act of 1933 or on any other statute or at common law, on the ground that the registration statement or Prospectus, as from time to time amended and supplemented, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, unless such statement or omission was made in reliance upon, and in conformity with, information furnished in writing to the Fund in connection therewith by or on behalf of the Principal Underwriter; provided, however, that in no case (i) is the indemnity of the Fund in favor of the Principal Underwriter and any such controlling person to be deemed to protect such Principal Underwriter or any such controlling person against any liability to the Fund or its security holders to which such Principal Underwriter or any such controlling person would otherwise be subject by reason

of willful misfeasance, bad faith, or gross negligence, in the performance of its duties or by reason of its reckless disregard of its obligations and duties under this Agreement, or (ii) is the Fund to be liable under its indemnity agreement contained in this paragraph with respect to any claim made against the Principal Underwriter or any such controlling person unless the Principal Underwriter or such controlling person, as the case may be, shall have notified the Fund in writing within a reasonable time after the summons or other first legal process giving information of the nature of the claim shall have been served upon the Principal Underwriter or such controlling person (or after such Principal Underwriter or such controlling person shall have received notice of such service on any designated agent), but failure to notify the Fund of any such claim shall not relieve it from any liability which it may have to the person against whom such action is brought otherwise than on account of its indemnity agreement contained in this paragraph. The Fund shall be entitled to participate, at its own expense, in the defense, or, if it so elects, to assume the defense of any suit brought to enforce any such liability, but if the Fund elects to assume the defense, such defense shall be conducted by counsel chosen by it and satisfactory to the Principal Underwriter or controlling person or persons, defendant or defendants in the suit. In the event the Fund elects to assume the defense of any such suit and retain such counsel, the Principal Underwriter or controlling person or persons, defendant or defendants in the suit, shall bear the fees and expenses of any additional counsel retained by them, but, in case the Fund does not elect to assume the defense of any such suit, it shall reimburse the Principal Underwriter or controlling person or persons, defendant or defendants in the suit, for the reasonable fees and expenses of any counsel retained by them. The Fund agrees promptly to notify the Principal Underwriter of the commencement of any litigation or proceedings against it or any of its officers or Directors in connection with the issuance or sale of any of the shares.

4. The Principal Underwriter covenants and agrees that, in selling the shares of the Fund, it will use its best efforts in all respects duly to conform with the requirements of all state and federal laws relating to the sale of such securities, and will indemnify and hold harmless the Fund and each

of its Directors and officers and each person, if any, who controls the Fund within the meaning of Section 15 of the Securities Act of 1933, against any loss, liability, damages, claim or expense (including the reasonable cost of investigating or defending any alleged loss, liability, damages, claim or expense and reasonable counsel fees incurred in connection therewith), arising by reason of any person acquiring any shares, which may be based upon the Securities Act of 1933 or any other statute or at common law, on account of any wrongful act of the Principal Underwriter or any of its employees (including any failure to conform with any requirement of any state or federal law relating to the sale of such securities) or on the ground that the registration statement or Prospectus, as from time to time amended and supplemented, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in so far as any such statement or omission was made in reliance upon, and in conformity with information furnished in writing to the Fund in connection therewith by or on behalf of the Principal Underwriter, provided, however, that in no case (i) is the indemnity of the Principal Underwriter in favor of any person indemnified to be deemed to protect the Fund or any such person against any liability to which the Fund or any such person would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in the performance of its or his duties or by reason of its or his reckless disregard of its obligations and duties under this Agreement, or (ii) is the Principal Underwriter to be liable under its indemnity agreement contained in this paragraph with respect to any claim made against the Fund or any person indemnified unless the Fund or such person, as the case may be, shall have notified the Principal Underwriter in writing within a reasonable time after the summons or other first legal process giving information of the nature of the claim shall have been served upon the Fund or upon such person (or after the Fund or such person shall have received notice of such service on any designated agent), but failure to notify the Principal Underwriter of any such claim shall not relieve it from any liability which it may have to the Fund or any person against whom such action is brought otherwise than on account of its indemnity

agreement contained in this paragraph. The Principal Underwriter shall be entitled to participate, at its own expense, in the defense, or, if it so elects, to assume the defense of any suit brought to enforce any such liability, but, if the Principal Underwriter elects to assume the defense, such defense shall be conducted by counsel chosen by it and satisfactory to the Fund, or to its officers or Directors, or to any controlling person or persons, defendant or defendants in the suit. In the event that the Principal Underwriter elects to assume the defense of any such suit and retain such counsel, the Fund or such officers or Directors or controlling person or persons, defendant or defendants in the suit, shall bear the fee and expenses of any additional counsel retained by them, but, in case the Principal Underwriter does not elect to assume the defense of any such suit, it shall reimburse the Fund and such officers and Directors or controlling person or persons, defendant or defendants in such suit, for the reasonable fees and expenses of any counsel retained by them. The Principal Underwriter agrees promptly to notify the Fund of the commencement of any litigation or proceedings against it in connection with the issue and sale of any of the shares.

Neither the Principal Underwriter nor any dealer nor any other person is authorized by the Fund to give any information or to make any representations, other than those contained in the Registration Statement or Prospectus filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (as said Registration Statement and Prospectus may be amended or supplemented from time to time), covering the shares of the Fund. Neither the Principal Underwriter nor any dealer nor any other person is authorized to act as agent for the Fund in connection with the offering or sale of shares of the Fund to the public or otherwise. All such sales made by the Principal Underwriter shall be made by it as principal, for its own account. The Principal Underwriter may, however, act as agent in connection with the repurchase of shares as provided in paragraph 6 below, or in connection with "exchanges" between investment companies sponsored by the Principal Underwriter as provided in the agreement or agreements among such companies as from time to time in effect.

5. The Fund will pay, or cause to be paid—

(i) all the costs and expenses of the Fund, including fees and disbursements of its counsel, in connection with the preparation and filing of any required Registration Statement and/or Prospectus under the Securities Act of 1933, as amended, covering its shares and all amendments and supplements thereto, and preparing and mailing periodic reports to shareholders (including the expense of setting up in type any such Registration Statement, Prospectus or periodic report);

(ii) the cost of preparing temporary and permanent stock certificates for shares of the Fund;

(iii) the cost and expenses of delivering to the Principal Underwriter at its office in Boston, Massachusetts, all shares purchased by it as principal hereunder;

(iv) all the federal and state issue and/or transfer taxes payable upon the issue by or (in the case of treasury shares) transfer from the Fund to the Principal Underwriter of any and all shares purchased by the Principal Underwriter hereunder.

The Principal Underwriter agrees that, after the Prospectus and periodic reports have been set up in type, it will bear the expense of printing and distributing any copies thereof which are to be used in connection with the offering of shares to dealers or investors. The Principal Underwriter further agrees that it will bear the expenses of preparing, printing and distributing any other literature used by the Principal Underwriter or furnished by it for use by dealers in connection with the offering of the shares for sale to the public, any expenses of advertising in connection with such offering, and the expenses (other than auditing expense) of qualification of the shares for sale, and, if necessary or advisable in connection therewith, of qualifying the Fund as a dealer or broker, in such states as shall be selected by the Principal Underwriter and the fees payable to each such state for continuing the qualification therein until the Principal Underwriter notifies the Fund that it does not wish such qualification continued.

6. The Fund hereby authorizes the Principal Underwriter to repurchase, upon the terms and conditions set forth in written instructions given by the Fund to the Principal Underwriter from time to time, as agent of the Fund and for its account, such shares of the Fund as may be offered for sale to the Fund from time to time.

(a) The Principal Underwriter shall notify in writing State Street Bank and Trust Company, Custodian of the Fund, at the end of each business day, or as soon thereafter as the repurchases have been compiled, of the number of shares repurchased for the account of the Fund since the last previous report, together with the prices at which such repurchases were made, and upon the request of any Director of the Fund shall furnish similar information with respect to all repurchases made up to the time of the request on any day.

(b) The Fund reserves the right to suspend or revoke the foregoing authorization at any time; unless otherwise stated, any such suspension or revocation shall be effective forthwith upon receipt of notice thereof by an officer of the Principal Underwriter, by telegraph or by written instrument from any two members of the Investment Management Committee of the Board of Directors of the Fund. In the event that the authorization of the Principal Underwriter is, by the terms of such notice, suspended for more than twenty-four hours or until further notice, the authorization given by this paragraph 6 shall not be revived except by action of a majority of the members of said Investment Management Committee.

(c) The Principal Underwriter shall have the right to terminate the operation of this paragraph 6 upon giving to the Fund thirty (30) days' written notice thereof.

(d) The Fund agrees to authorize and direct State Street Bank and Trust Company of Boston, Custodian, to pay, for the account of the Fund, the purchase price of any shares so repurchased against delivery of the certificates in proper form for transfer to the Fund or for cancellation by the Fund.

(e) The Principal Underwriter shall receive no commission in respect of any repurchase of shares under the foregoing authorization and appointment as agent.

(f) The Fund agrees to reimburse the Principal Underwriter, from time to time upon demand, for any reasonable expenses incurred in connection with the repurchase of shares pursuant to this paragraph 6.

7. If, at any time during the existence of this Agreement, the Fund shall deem it necessary or advisable in the best interests of the Fund that any amendment of this Agreement be made in order to comply with the recommendations

or requirements of the Securities and Exchange Commission or other governmental authority or to obtain any advantage under Massachusetts or federal tax laws, and shall notify the Principal Underwriter of the form of amendment which it deems necessary or advisable and the reasons therefor, and, if the Principal Underwriter declines to assent to such amendment, the Fund may terminate this Agreement forthwith by written notice to the Principal Underwriter. If, at any time during the existence of this Agreement, upon request by the Principal Underwriter, the Fund fails (after a reasonable time) to make any changes in its governing instruments or in its methods of doing business which are necessary in order to comply with any requirements of federal law or regulations of the Securities and Exchange Commission or of a national securities association of which the Principal Underwriter is or may be a member, relating to the sale of the shares of the Fund, the Principal Underwriter may terminate this Agreement forthwith by written notice to the Fund.

8. The Principal Underwriter agrees that it will not take any long or short positions in the shares of the Fund except as permitted by paragraphs 1 and 6 hereof and that, so far as it can control the situation, it will prevent any officer, Director or owner of voting common stock of the Principal Underwriter from taking any long or short position in the shares of the Fund, except as permitted by this Agreement or the governing instruments of the Fund. Whenever used in this Agreement, the term "governing instruments" shall mean the Articles of Organization and the By-Laws of the Fund, as from time to time amended.

9. The Agreement dated January 17, 1969, is hereby terminated effective the opening of business on the date of this Agreement, and the relations between the parties hereto thereafter will be governed by the terms of this Agreement. This Agreement shall continue in force until terminated as in this Agreement above provided, except:

(a) that this Agreement shall continue in effect for a period of more than two (2) years from the date of its execution only so long as such continuance is specifically approved at least annually by the Board of Directors of the Fund or by vote of a majority of the outstanding voting securities of the Fund; and

(b) that either party shall have the right to terminate

this Agreement on six (6) months' written notice thereof given in writing to the other.

10. In the event of the assignment (as defined in Section 2(a)(4) of the Investment Company Act of 1940) of this Agreement by the Principal Underwriter, this Agreement shall automatically terminate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written.

MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.
By _____

VANCE, SANDERS & COMPANY, INC.
By _____
President

November 21, 1969

Vance, Sanders & Company, Inc.
111 Devonshire Street
Boston, Massachusetts 02109

Gentlemen:

Massachusetts Investors Growth Stock Fund, Inc. (the "Fund") refers you to paragraph 6 of the Distribution Agreement between you and the Fund dated as of November 21, 1969, pursuant to which the Fund has authorized you to repurchase, upon the terms and conditions set forth in written instructions given by the Fund to you from time to time, as agent of the Fund and for its account, such shares of the Fund as may be offered for sale to the Fund from time to time.

As agent of the Fund you may accept offers from an investment dealer to sell such shares (1) at a price not exceeding the net asset value of such shares determined next after the receipt of the order by the dealer from his customer if such offer is received by you prior to either your close of business that day or the time the net asset value is next determined, whichever occurs first, or (2) at a price not exceeding the net asset value of such shares determined at such later time as may be stipulated by the dealer.

As agent of the Fund you may also accept offers from a shareholder of record (including an offer from an agent of such shareholder), to sell such shares (1) at a price not exceeding the net asset value of such shares determined next after the receipt of the offer by you, or (2) at a price not exceeding the net asset value of such shares determined at such later time as may be stipulated by such shareholder or agent.

Very truly yours,

MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.
By _____
Secretary

AGREEMENT

THIS AGREEMENT made as of the 1st day of January, 1972, by and among Massachusetts Investors Trust ("MIT"), Massachusetts Investors Growth Stock Fund, Inc. ("MIG"), Massachusetts Income Development Fund, Inc. ("MID"), Massachusetts Capital Development Fund, Inc. ("MCD") and Massachusetts Financial Development Fund, Inc. ("MFD") (MIT, MIG, MID, MCD and MFD herein collectively called the "Funds") and Vance, Sanders & Company, Inc. (herein called the "General Distributor").

WITNESSETH THAT:

WHEREAS, pursuant to the terms of the General Distribution Agreements between each Fund and the General Distributor, the General Distributor has the exclusive right to purchase from the Funds shares of each Fund at the net asset value used in determining the public offering price on which orders for shares were based, but subject to the exceptions therein set forth or referred to;

WHEREAS, MIT and MIG are parties to an agreement dated August 1, 1966 (the "1966 Agreement") and MID is a party to an agreement dated April 1, 1971 (the "1971 Agreement"), making available to existing and future shareholders of MIT, MIG and MID the opportunity to implement changes in their investment objectives through the acquisition, without sales charge, of the shares of one or more of those funds by use of the proceeds of redemption of shares of another of such funds;

WHEREAS, the Funds have differing investment objectives as set out in their offering prospectuses, and consider it appropriate to make available to existing and future shareholders of the Funds the opportunity to implement changes in their investment objectives through the acquisition, without sales charge, of the shares of any one or more of the Funds by use of the proceeds of redemption of shares of any other Fund (herein referred to in various grammatical forms of the word "exchange"), subject to reasonable conditions designed to limit expense and administrative inconvenience;

WHEREAS, the General Distributor currently acts as the principal underwriter of the Funds; and

WHEREAS, the Funds and the General Distributor desire to continue to make exchanges permitted by the 1966 Agreement and the 1971 Agreement available to the shareholders of MIT, MIG, and MID and to extend the offer of exchange to the shareholders of MCD and MFD by means of a single agreement which replaces the 1971 Agreement and, with respect to the rights and obligations of MIT and MIG to each other, replaces the 1966 Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. During the term of this Agreement shares of each of the Funds may be offered by the General Distributor as principal at net asset value to shareholders of each of the Funds who wish to apply the proceeds of redemption of shares of any one or more of the Funds to the acquisition of shares of any one or more of the Funds under the following circumstances:

(a) The shareholder has held at least 80% in value of the shares to be exchanged for at least six months, including, in the case of the estate of a deceased shareholder or the heirs or legatees of a deceased shareholder, the period during which the shares were held by the decedent.

(b) The net asset value of the shares to be redeemed in the exchange is at least $1,000.

2. The General Distributor shall process all exchanges in the usual manner as though they were unrelated repurchases and sales. The General Distributor may charge the shareholder a reasonable amount for its services in effecting the exchange. The General Distributor shall report daily to the investment companies concerned all exchanges made pursuant to this Agreement. The General Distributor will not seek reimbursement from the Funds for any expenses incurred by it in connection with any such repurchases.

3. Each of the Funds may, by written notice to each of the other Funds and the General Distributor terminate its exchange offer provided by this Agreement and require the General Distributor and the other Funds to terminate the exchange offer in respect of the shares of the Fund so giving notice. The General Distributor may by written notice to any Fund terminate its services in effecting such exchanges on behalf of such Fund. The exchange offers with respect to shares of a Fund made by the General

Distributor to the shareholders of the Funds pursuant to this Agreement shall in any event be terminated effective upon the termination of the services of the General Distributor as principal underwriter of the shares of such Fund.

4. Nothing in this Agreement shall modify or reduce the obligations of a Fund or the General Distributor contained in the General Distribution Agreement between the General Distributor and such Fund as the same may from time to time be modified and amended.

5. The terms of this Agreement shall become effective as of the date first written above and replace the 1971 Agreement, and, with respect to the rights and obligations of MIT and MIG to each other, the 1966 Agreement, except that the privilege of exchanging shares of MIT, MIG, MID and MCD for shares of MFD and the privilege of exchanging shares of MFD for shares of MIT, MIG, MID and MCD shall not become effective until April 1, 1972.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written and caused their seals to be affixed by their representatives thereunto duly authorized.

MASSACHUSETTS INVESTORS TRUST

Attest: _____ By _____
Secretary — Managing Trustee

MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.

Attest: _____ By _____
Clerk — Vice President

MASSACHUSETTS INCOME DEVELOPMENT FUND, INC.

Attest: _____ By _____
Secretary — Vice President

MASSACHUSETTS CAPITAL DEVELOPMENT FUND, INC.

Attest: _____ By _____
Secretary — Vice President

MASSACHUSETTS FINANCIAL DEVELOPMENT FUND, INC.

Attest: _____ By _____
Secretary — Vice President

VANCE, SANDERS & COMPANY, INC.

Attest: _____ By _____
Secretary — Vice President

MASSACHUSETTS INVESTORS GROWTH STOCK
FUND, INC.
200 Berkeley Street
Boston, Massachusetts 02116
(617) 542-8225

Vance, Sanders, & Company, Inc.
111 Devonshire Street
Boston
Massachusetts 02109

November 21, 1972

Gentlemen:

In accordance with Section 9 of the Distribution Agreement between you and us dated November 21, 1969, you are hereby notified that the undersigned hereby exercises its right to terminate such agreement effective at the close of business June 30, 1973.

Please acknowledge receipt of this notice by signing and returning the enclosed copy of this letter.

Very truly yours,
MASSACHUSETTS INVESTORS GROWTH STOCK
FUND INC.

By /s/ Tarrant Cutler
Tarrant Cutler
Secretary

Notice of termination received
this 24th day of November, 1972.
VANCE, SANDERS & COMPANY, INC.

By /s/ John D. Wilson

(Title Omitted in Printing)

COMMONWEALTH OF MASSACHUSETTS }
COUNTY OF SUFFOLK } ss.:

THOMAS OTIS, being duly sworn, deposes and says:

1. I am an attorney and am Vice President of Vance, Sanders & Company, Inc. ("Vance, Sanders").

2. Attached hereto are the following exhibits: Exhibit A, being the Distribution Agreement dated November 21, 1969 between Vance, Sanders and Massachusetts Investors Growth Stock Fund, Inc. ("MIGS"); Exhibit B, being a letter of instruction dated November 21, 1969 from MIGS to Vance, Sanders; and Exhibit C, being the Exchange Agreement dated January 1, 1972 between Vance, Sanders and MIGS, Massachusetts Investors Trust, Massachusetts Income Development Fund, Inc., Massachusetts Capital Development Fund, Inc. and Massachusetts Financial Development Fund, Inc. There are no provisions, explicit or otherwise, in such Exhibits which prohibt Vance, Sanders from executing brokerage transactions in MIGS shares. There are no other contracts, understandings or agreements between Vance, Sanders and MIGS which would prohibit Vance, Sanders from executing brokerage transactions in MIGS shares.

THOMAS OTIS

(Jurat Omitted in Printing)

DISTRIBUTION AGREEMENT

AGREEMENT made this twenty-first day of November, 1969, between Massachusetts Investors Growth Stock Fund, Inc., a Massachusetts corporation having principal place of business in Boston in the Commonwealth of Massachusetts, hereinafter called the "Fund", and Vance, Sanders & Company, Inc., a Maryland corporation having its principal place of business in said Boston, hereinafter sometimes called the "Principal Underwriter";

WHEREAS the Fund and the Principal Underwriter desire to replace the existing Agreement between them dated January 17, 1969, with a new Agreement;

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, the parties hereto agree:

1. The Fund grants to the Principal Underwriter the right to purchase shares of the Fund upon the terms hereinbelow set forth during the term of this Agreement. While this Agreement is in force, the Principal Underwriter agrees to use its best efforts to find purchasers for shares of the Fund.

The Principal Underwriter shall have the right to buy from the Fund the shares needed, but not more than the shares needed (except fo. clerical errors and errors of transmission) to fill unconditional orders for shares of the Fund placed with the Principal Underwriter by dealers or investors as set forth in the current prospectus relating to shares of the Fund. The price which the Principal Underwriter shall pay for the shares so purchased from the Fund shall be the net asset value used in determining the public offering price on which such orders were based. The Principal Underwriter shall notify the State Street Bank and Trust Company, Custodian and Agent of the Fund, at the end of each business day, or as soon thereafter as the orders placed with it have been compiled, of the number of shares and the prices thereof which the Principal Underwriter is to purchase as principal for resale. The Principal Underwriter shall take down and pay for shares ordered from the Fund on or before the seventh business day (excluding Saturdays) after the shares have been so ordered.

The right granted to the Principal Underwriter to buy shares from the Fund shall be exclusive, except that said exclusive right shall not apply to shares issued in connec-

tion with the merger or consolidation of any other investment company or personal holding company with the Fund or the acquisition by purchase or otherwise of all (or substantially all) the assets or the outstanding shares of any such company, by the Fund; nor shall it apply to shares issued by the Fund in distribution of realized capital gains of the Fund payable in shares or in cash at the option of the shareholder.

2. The shares may be resold by the Principal Underwriter to dealers having sales agreements with the Principal Underwriter, and to investors, upon the following terms and conditions:

The public offering price, i.e., the price per share at which the Principal Underwriter or dealer purchasing shares from the Principal Underwriter may sell shares to the public, shall be the public offering price as set forth in the current Prospectus relating to said shares, but not to exceed the net asset value at which the Principal Underwriter is to purchase the shares, plus a sales charge not to exceed 8.5% of the public offering price (the net asset value divided by .915). If the resulting public offering price does not come out to an even cent, the public offering price shall be adjusted to the nearest cent.

The Principal Underwriter may also sell shares to Directors, officers and full-time employees of the Fund or of the Principal Underwriter or of any investment adviser of the Fund who have been such for 90 days, or to any trust, pension, profit-sharing or other benefit plan for such persons at the net asset value at which the Principal Underwriter is to purchase the shares (as established pursuant to paragraph 1 above) if the purchaser from the Principal Underwriter represents in writing that the shares are being acquired for investment purposes and agrees that such shares will not be resold except to the Fund.

The net asset value of shares of the Fund shall be determined by the Fund or State Street Bank and Trust Company as the agent of the Fund, as of the close of the New York Stock Exchange on each business day on which said Exchange is open, in accordance with the method set forth in the governing instruments (as hereinafter defined) of the Fund. The Fund may also cause the net asset value to be determined in substantially the same manner or estimated in such manner and as of such other hour or hours

as may from time to time be agreed upon in writing by the Fund and Principal Underwriter. The Fund shall have the right to suspend the sale of its shares if, because of some extraordinary condition, the New York Stock Exchange shall be closed, or if, in the judgment of a majority of the members of the Investment Management Committee of the Board of Directors of the Fund, conditions obtaining during the hours when said Exchange is open render such action advisable.

3. The Fund agrees that it will, from time to time, but subject to the necessary approval of the shareholders, take all necessary action to fix the number of authorized shares and such steps as may be necessary to register the same under the Federal Securities Act of 1933 (as amended from time to time) to the end that there will be available for sale such number of shares as the Principal Underwriter may reasonably be expected to sell. The Fund agrees to indemnify and hold harmless the Principal Underwriter and each person, if any, who controls the Principal Underwriter within the meaning of Section 15 of the Securities Act of 1933 against any loss, liability, claim, damages or expense (including the reasonable cost of investigating or defending any alleged loss, liability, claim, damages or expense and reasonable counsel fees incurred in connection therewith), arising by reason of any person acquiring any shares, which may be based upon the Securities Act of 1933 or on any other statute or at common law, on the ground that the registration statement or Prospectus, as from time to time amended and supplemented, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, unless such statement or omission was made in reliance upon, and in conformity with, information furnished in writing to the Fund in connection therewith by or on behalf of the Principal Underwriter; provided, however, that in no case (i) is the indemnity of the Fund in favor of the Principal Underwriter and any such controlling person to be deemed to protect such Principal Underwriter or any such controlling person against any liability to the Fund or its security holders to which such Principal Underwriter or any such controlling person would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in

the performance of its duties or by reason of its reckless disregard of its obligations and duties under this Agreement, or (ii) is the Fund to be liable under its indemnity agreement contained in this paragraph with respect to any claim made against the Principal Underwriter or any such controlling person unless the Principal Underwriter or such controlling person, as the case may be, shall have notified the Fund in writing within a reasonable time after the summons or other first legal process giving information of the nature of the claim shall have been served upon the Principal Underwriter or such controlling person (or after such Principal Underwriter or such controlling person shall have received notice of such service on any designated agent), but failure to notify the Fund of any such claim shall not relieve it from any liability which it may have to the person against whom such action is brought otherwise than on account of its indemnity agreement contained in this paragraph. The Fund shall be entitled to participate, at its own expense, in the defense, or, if it so elects, to assume the defense of any suit brought to enforce any such liability, but if the Fund elects to assume the defense, such defense shall be conducted by counsel chosen by it and satisfactory to the Principal Underwriter or controlling person or persons, defendant or defendants in the suit. In the event the Fund elects to assume the defense of any such suit and retain such counsel, the Principal Underwriter or controlling person or persons, defendant or defendants in the suit, shall bear the fees and expenses of any additional counsel retained by them, but, in case the Fund does not elect to assume the defense of any such suit, it shall reimburse the Principal Underwriter or controlling person or persons, defendant or defendants in the suit, for the reasonable fees and expenses of any counsel retained by them. The Fund agrees promptly to notify the Principal Underwriter of the commencement of any litigation or proceedings against it or any of its officers or Directors in connection with the issuance or sale of any of the shares.

4. The Principal Underwriter covenants and agrees that, in selling the shares of the Fund, it will use its best efforts in all respects duly to conform with the requirements of all state and federal laws relating to the sale of such securities, and will indemnify and hold harmless the Fund and each of its Directors and officers and each person, if any, who

controls the Fund within the meaning of Section 15 of the Securities Act of 1933, against any loss, liability, damages, claim or expense (including the reasonable cost of investigating or defending any alleged loss, liability, damages, claim or expense and reasonable counsel fees incurred in connection therewith), arising by reason of any person acquiring any shares, which may be based upon the Securities Act of 1933 or any other statute or at common law, on account of any wrongful act of the Principal Underwriter or any of its employees (including any failure to conform with any requirement of any state or federal law relating to the sale of such securities) or on the ground that the registration statement or Prospectus, as from time to time amended and supplemented, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading, in so far as any such statement or omission was made in reliance upon, and in conformity with information furnished in writing to the Fund in connection therewith by or on behalf of the Principal Underwriter, provided, however, that in no case (i) is the indemnity of the Principal Underwriter in favor of any person indemnified to be deemed to protect the Fund or any such person against any liability to which the Fund or any such person would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in the performance of its or his duties or by reason of its or his reckless disregard of its obligations and duties under this Agreement, or (ii) is the Principal Underwriter to be liable under its indemnity agreement contained in this paragraph with respect to any claim made against the Fund or any person indemnified unless the Fund or such person, as the case may be, shall have notified the Principal Underwriter in writing within a reasonable time after the summons or other first legal process giving information of the nature of the claim shall have been served upon the Fund or upon such person (or after the Fund or such person shall have received notice of such service on any designated agent), but failure to notify the Principal Underwriter of any such claim shall not relieve it from any liability which it may have to the Fund or any person against whom such action is brought otherwise than on account of its indemnity agreement contained in this paragraph. The Principal

Underwriter shall be entitled to participate, at its own expense, in the defense, or, if it so elects, to assume the defense of any suit brought to enforce any such liability, but, if the Principal Underwriter elects to assume the defense, such defense shall be conducted by counsel chosen by it and satisfactory to the Fund, or to its officers or Directors, or to any controlling person or persons, defendant or defendants in the suit. In the event that the Principal Underwriter elects to assume the defense of any such suit and retain such counsel, the Fund or such officers or Directors or controlling person or persons, defendant or defendants in the suit, shall bear the fee and expenses of any additional counsel retained by them, but, in case the Principal Underwriter does not elect to assume the defense of any such suit, it shall reimburse the Fund and such officers and Directors or controlling person or persons, defendant or defendants in such suit, for the reasonable fees and expenses of any counsel retained by them. The Principal Underwriter agrees promptly to notify the Fund of the commencement of any litigation or proceedings against it in connection with the issue and sale of any of the shares.

Neither the Principal Underwriter nor any dealer nor any other person is authorized by the Fund to give any information or to make any representations, other than those contained in the Registration Statement or Prospectus filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (as said Registration Statement and Prospectus may be amended or supplemented from time to time), covering the shares of the Fund. Neither the Principal Underwriter nor any dealer nor any other person is authorized to act as agent for the Fund in connection with the offering or sale of shares of the Fund to the public or otherwise. All such sales made by the Principal Underwriter shall be made by it as principal, for its own account. The Principal Underwriter may, however, act as agent in connection with the repurchase of shares as provided in paragraph 6 below, or in connection with "exchanges" between investment companies sponsored by the Principal Underwriter as provided in the agreement or agreements among such companies as from time to time in effect.

5. The Fund will pay, or cause to be paid—

(i) all the costs and expenses of the Fund, including

fees and disbursements of its counsel, in connection with the preparation and filing of any required Registration Statement and/or Prospectus under the Securities Act of 1933, as amended, covering its shares and all amendments and supplements thereto, and preparing and mailing periodic reports to shareholders (including the expense of setting up in type any such Registration Statement, Prospectus or periodic report);

(ii) the cost of preparing temporary and permanent stock certificates for shares of the Fund;

(iii) the cost and expenses of delivering to the Principal Underwriter at its office in Boston, Massachusetts, all shares purchased by it as principal hereunder;

(iv) all the federal and state issue and/or transfer taxes payable upon the issue by or (in the case of treasury shares) transfer from the Fund to the Principal Underwriter of any and all shares purchased by the Principal Underwriter hereunder.

The Principal Underwriter agrees that, after the Prospectus and periodic reports have been set up in type, it will bear the expense of printing and distributing any copies thereof which are to be used in connection with the offering of shares to dealers or investors. The Principal Underwriter further agrees that it will bear the expenses of preparing, printing and distributing any other literature used by the Principal Underwriter or furnished by it for use by dealers in connection with the offering of the shares for sale to the public, any expenses of advertising in connection with such offering, and the expenses (other than auditing expense) of qualification of the shares for sale, and, if necessary or advisable in connection therewith, of qualifying the Fund as a dealer or broker, in such states as shall be selected by the Principal Underwriter and the fees payable to each such state for continuing the qualification therein until the Principal Underwriter notifies the Fund that it does not wish such qualification continued.

6. The Fund hereby authorizes the Principal Underwriter to repurchase, upon the terms and conditions set forth in written instructions given by the Fund to the Principal Underwriter from time to time, as agent of the Fund and for its account, such shares of the Fund as may be offered for sale to the Fund from time to time.

(a) The Principal Underwriter shall notify in writing

State Street Bank and Trust Company, Custodian of the Fund, at the end of each business day, or as soon thereafter as the repurchases have been compiled, of the number of shares repurchased for the account of the Fund since the last previous report, together with the prices at which such repurchases were made, and upon the request of any Director of the Fund shall furnish similar information with respect to all repurchases made up to the time of the request on any day.

(b) The Fund reserves the right to suspend or revoke the foregoing authorization at any time; unless otherwise stated, any such suspension or revocation shall be effective forthwith upon receipt of notice thereof by an officer of the Principal Underwriter, by telegraph or by written instrument from any two members of the Investment Management Committee of the Board of Directors of the Fund. In the event that the authorization of the Principal Underwriter is, by the terms of such notice, suspended for more than twenty-four hours or until further notice, the authorization given by this paragraph 6 shall not be revived except by action of a majority of the members of said Investment Management Committee.

(c) The Principal Underwriter shall have the right to terminate the operation of this paragraph 6 upon giving to the Fund thirty (30) days' written notice thereof.

(d) The Fund agrees to authorize and direct State Street Bank and Trust Company of Boston, Custodian, to pay, for the account of the Fund, the purchase price of any shares so repurchased against delivery of the certificates in proper form for transfer to the Fund or for cancellation by the Fund.

(e) The Principal Underwriter shall receive no commission in respect of any repurchase of shares under the foregoing authorization and appointment as agent.

(f) The Fund agrees to reimburse the Principal Underwriter, from time to time upon demand, for any reasonable expenses incurred in connection with the repurchase of shares pursuant to this paragraph 6.

7. If, at any time during the existence of this Agreement, the Fund shall deem it necessary or advisable in the best interests of the Fund that any amendment of this Agreement be made in order to comply with the recommendations or requirements of the Securities and Exchange Commis-

sion or other governmental authority or to obtain any advantage under Massachusetts or federal tax laws, and shall notify the Principal Underwriter of the form of amendment which it deems necessary or advisable and the reasons therefor, and, if the Principal Underwriter declines to assent to such amendment, the Fund may terminate this Agreement forthwith by written notice to the Principal Underwriter. If, at any time during the existence of this Agreement, upon request by the Principal Underwriter, the Fund fails (after a reasonable time) to make any change in its governing instruments or in its methods of doing business which are necessary in order to comply with any requirements of federal law or regulations of the Securities and Exchange Commission or of a national securities association of which the Principal Underwriter is or may be a member, relating to the sale of the shares of the Fund, the Principal Underwriter may terminate this Agreement forthwith by written notice to the Fund.

8. The Principal Underwriter agrees that it will not take any long or short positions in the shares of the Fund except as permitted by paragraphs 1 and 6 hereof and that, so far as it can control the situation, it will prevent any officer, Director or owner of voting common stock of the Principal Underwriter from taking any long or short position in the shares of the Fund, except as permitted by this Agreement or the governing instruments of the Fund. Whenever used in this Agreement, the term "governing instruments" shall mean the Articles of Organization and the By-Laws of the Fund, as from time to time amended.

9. The Agreement dated January 17, 1969, is hereby terminated effective the opening of business on the date of this Agreement, and the relations between the parties hereto thereafter will be governed by the terms of this Agreement. This Agreement shall continue in force until terminated as in this Agreement above provided, except:

(a) that this Agreement shall continue in effect for a period of more than two (2) years from the date of its execution only so long as such continuance is specifically approved at least annually by the Board of Directors of the Fund or by vote of a majority of the outstanding voting securities of the Fund; and

(b) that either party shall have the right to terminate

this Agreement on six (6) months' written notice thereof given in writing to the other.

10. In the event of the assignment (as defined in Section 2(a)(4) of the Investment Company Act of 1940) of this Agreement by the Principal Underwriter, this Agreement shall automatically terminate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written.

MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.

By _____

VANCE, SANDERS & COMPANY, INC.

By _____

President

November 21, 1969

Vance, Sanders & Company, Inc.
111 Devonshire Street
Boston, Massachusetts 02109

Gentlemen:

Massachusetts Investors Growth Stock Fund, Inc. (the "Fund") refers you to paragraph 6 of the Distribution Agreement between you and the Fund dated as of November 21, 1969, pursuant to which the Fund has authorized you to repurchase, upon the terms and conditions set forth in written instructions given by the Fund to you from time to time, as agent of the Fund and for its account, such shares of the Fund as may be offered for sale to the Fund from time to time.

As agent of the Fund you may accept offers from an investment dealer to sell such shares (1) at a price not exceeding the net asset value of such shares determined next after the receipt of the order by the dealer from his customer if such offer is received by you prior to either your close of business that day or the time the net asset value is next determined, whichever occurs first, or (2) at a price not exceeding the net asset value of such shares determined at such later time as may be stipulated by the dealer.

As agent of the Fund you may also accept offers from a shareholder of record (including an offer from an agent of such shareholder), to sell such shares (1) at a price not exceeding the net asset value of such shares determined next after the receipt of the offer by you, or (2) at a price not exceeding the net asset value of such shares determined at such later time as may be stipulated by such shareholder or agent.

Very truly yours,

MASSACHUSETTS INVESTORS
GROWTH STOCK FUND, INC.
By _____
Secretary

AGREEMENT

THIS AGREEMENT made as of the 1st day of January, 1972, by and among Massachusetts Investors Trust ("MIT"), Massachusetts Investors Growth Stock Fund, Inc. ("MIG"), Massachusetts Income Development Fund, Inc. ("MID"), Massachusetts Capital Development Fund, Inc. ("MCD") and Massachusetts Financial Development Fund, Inc. ("MFD") (MIT, MIG, MID, MCD and MFD herein collectively called the "Funds") and Vance, Sanders & Company, Inc. (herein called the "General Distributor").

WITNESSETH THAT:

WHEREAS, pursuant to the terms of the General Distribution Agreements between each Fund and the General Distributor, the General Distributor has the exclusive right to purchase from the Funds shares of each Fund at the net asset value used in determining the public offering price on which orders for shares were based, but subject to the exceptions therein set forth or referred to;

WHEREAS, MIT and MIG are parties to an agreement dated August 1, 1966 (the "1966 Agreement") and MID is a party to an agreement dated April 1, 1971 (the "1971 Agreement"), making available to existing and future shareholders of MIT, MIG and MID the opportunity to implement changes in their investment objectives through the acquisition, without sales charge, of the shares of one or more of those funds by use of the proceeds of redemption of shares of another of such funds;

WHEREAS, the Funds have differing investment objectives as set out in their offering prospectuses, and consider it appropriate to make available to existing and future shareholders of the Funds the opportunity to implement changes in their investment objectives through the acquisition, without sales charge, of the shares of any one or more of the Funds by use of the proceeds of redemption of shares of any other Fund (herein referred to in various grammatical forms of the word "exchange"), subject to reasonable conditions designed to limit expense and administrative inconvenience;

WHEREAS, the General Distributor currently acts as the principal underwriter of the Funds; and

WHEREAS, the Funds and the General Distributor desire to continue to make exchanges permitted by the 1966 Agreement and the 1971 Agreement available to the shareholders of MIT, MIG, and MID and to extend the offer of exchange to the shareholders of MCD and MFD by means of a single agreement which replaces the 1971 Agreement and, with respect to the rights and obligations of MIT and MIG to each other, replaces the 1966 Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. During the term of this Agreement shares of each of the Funds may be offered by the General Distributor as principal at net asset value to shareholders of each of the Funds who wish to apply the proceeds of redemption of shares of any one or more of the Funds to the acquisition of shares of any one or more of the Funds under the following circumstances:

(a) The shareholder has held at least 80% in value of the shares to be exchanged for at least six months, including, in the case of the estate of a deceased shareholder or the heirs or legatees of a deceased shareholder, the period during which the shares were held by the decedent.

(b) The net asset value of the shares to be redeemed in the exchange is at least $1,000.

2. The General Distributor shall process all exchanges in the usual manner as though they were unrelated repurchases and sales. The General Distributor may charge the shareholder a reasonable amount for its services in effecting the exchange. The General Distributor shall report daily to the investment companies concerned all exchanges made pursuant to this Agreement. The General Distributor will not seek reimbursement from the Funds for any expenses incurred by it in connection with any such repurchases.

3. Each of the Funds may, by written notice to each of the other Funds and the General Distributor terminate its exchange offer provided by this Agreement and require the General Distributor and the other Funds to terminate the exchange offer in respect of the shares of the Fund so giving notice. The General Distributor may by written notice to any Fund terminate its services in effecting such exchanges on behalf of such Fund. The exchange offers

with respect to shares of a Fund made by the General Distributor to the shareholders of the Funds pursuant to this Agreement shall in any event be terminated effective upon the termination of the services of the General Distributor as principal underwriter of the shares of such Fund.

4. Nothing in this Agreement shall modify or reduce the obligations of a Fund or the General Distributor contained in the General Distribution Agreement between the General Distributor and such Fund as the same may from time to time be modified and amended.

5. The terms of this Agreement shall become effective as of the date first written above and replace the 1971 Agreement, and, with respect to the rights and obligations of MIT and MIG to each other, the 1966 Agreement, except that the privilege of exchanging shares of MIT, MIG, MID and MCD for shares of MFD and the privilege of exchanging shares of MFD for shares of MIT, MIG, MID and MCD shall not become effective until April 1, 1972.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written and caused their seals to be affixed by their representatives thereunto duly authorized.

MASSACHUSETTS INVESTORS TRUST

Attest: _____ By _____
Secretary — Managing Trustee

MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.

Attest: _____ By _____
Clerk — Vice President

MASSACHUSETTS INCOME DEVELOPMENT FUND, INC.

Attest: _____ By _____
Secretary — Vice President

MASSACHUSETTS CAPITAL DEVELOPMENT FUND, INC.

Attest: _____ By _____
Secretary — Vice President

MASSACHUSETTS FINANCIAL DEVELOPMENT FUND, INC.

Attest: _____ By _____
Secretary Vice President

VANCE, SANDERS & COMPANY, INC.

Attest: _____ By _____
Secretary Vice President

(Title Omitted in Printing)

MOTION OF DEFENDANTS FIDELITY FUND, INC. AND THE CROSBY CORPORATION TO DISMISS THE COMPLAINT

Upon the complaint and answer herein and upon the affidavit of Caleb Loring sworn to May 23, 1973, and pursuant to Rules 12(b)(6) and (d) of the Federal Rules of Civil Procedure and Pretrial Orders Nos. 1 and 2 previously entered herein, defendants Fidelity Fund, Inc. and The Crosby Corporation hereby move to dismiss the complaint or appropriate parts thereof on the ground that they fail to state a claim upon which relief can be granted.

The grounds for the motion, more fully set forth in the accompanying memorandum of points and authorities, are that the acts, transactions, practices, and conduct complained of in the complaint are exempt from the antitrust laws by operation of the securities laws, including the Securities Exchange Act of 1934, the Investment Company Act of 1940, and orders, rules, regulations acts and practices thereunder, including those of the Securities and Exchange Commission and the National Association of Securities Dealers, Inc.

Respectfully submitted,

William R. Meagher
WILLIAM R. MEAGHER

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM
919 Third Avenue
New York, N. Y. 10022
(212) 371-6000

—and—

Daniel P. Levitt
DANIEL P. LEVITT

PAUL, WEISS, RIFKIND,
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Washington, D. C. 20006
(202) 293-6370

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OF COUNSEL:
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Leonard H. Becker

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
1775 K Street, N. W., Suite 700
Washington, D. C. 20006

Dated: May 29, 1973

Affidavit of Caleb Loring, Jr.

(Title Omitted in Printing)

CALEB LORING, JR., being duly sworn, deposes and says:

1. I am the Assistant Secretary of The Crosby Corporation ("Crosby") a defendant herein, and am Vice President and Clerk of Fidelity Fund, Inc. ("Fidelity"), also a defendant herein. I am also Vice President, General Counsel and a Director of Fidelity Management and Research Company, which owns one hundred per cent of Crosby and is the investment advisor to Fidelity. In addition, I am Vice President of the other mutual funds in the "Fidelity Group".

2. I submit this affidavit in support of Crosby's and Fidelity's motion pursuant to pre-trial order No. 1 in this action for judgment dismissing the complaint or portions thereof on the ground that the activities complained of are exempt from the operations of the antitrust laws.

3. The purpose of this affidavit is to present to the Court the history of public filings made by Fidelity since its organization. There can be no dispute about these matters of public record.

4. Fidelity was organized prior to the passage of the Investment Company Act of 1940 ("1940 Act"). In its registration statement filed pursuant to the Securities Act of 1933 ("1933 Act"), effective December 9, 1937, one of the exhibits was the then existing underwriting agreement between the fund and its distributor, annexed hereto as Exhibit A. Since that time, the form of distribution agreement for the sale of Fidelity shares has been filed with the Securities and Exchange Commission ("SEC") under both the 1940 and 1933 Acts. Each agreement contains the provisions which the complaint alleges are violations of the antitrust laws.

5. Fidelity filed with its registration statement pursuant to Section 8 of the 1940 Act a specimen agreement between Paul H. Davis & Co., then principal underwriter for Fidelity, and the dealers in the Fidelity distribution system dated June 1, 1941. A copy of that agreement is annexed hereto as Exhibit B. Fidelity's quarterly and yearly reports pursuant to Section 30 of the 1940 Act filed in the ensuing thirty years have annexed or incorporated by reference the

underwriter-dealer agreement and reflected any changes therein. Copies of specimen agreements filed over this period are annexed hereto as Exhibit C.

6. The most recent sales agreement dated November 1, 1972 was annexed as an exhibit to the quarterly report filed under the 1940 Act for the quarter ended December 31, 1972. A copy of the current agreement is annexed hereto as Exhibit D and is also Exhibit A to the Crosby and Fidelity Answer in this action.

7. A review of all the agreements filed since 1941 shows that they have contained without substantial change the same language of which the Government complains in this action over since Fidelity's registration statement was first filed in 1941 and that the SEC has been continuously advised of these contractual provisions. In addition, Fidelity has filed the then current sales agreement as an exhibit or incorporated it by reference on some 16 amendments on Form S-5 to its 1933 Act registration.

8. As the Fidelity Group of funds has grown from one fund to several, the sales agreements have contained the same language, the only change herein relevant being the addition of one or another fund as it was organized. Thus, continuous and exhaustive filings have been made to apprise the SEC of the method of sale and distribution of all funds in the Fidelity Group since the SEC began administration of the 1940 Act.

Caleb Loring, Jr.

(Jurat Omitted in Printing)

EXHIBIT A

AGREEMENT made this 26th day of July, 1937, between Fidelity Fund, Inc., a Massachusetts corporation having its principal place of business in Boston in said Commonwealth, (hereinafter called the Issuer), and Fidelity Distributors, Inc., a Massachusetts corporation having its principal place of business in said Boston, (hereinafter called the Underwriter),—

In consideration of the agreements herein set forth of the other party hereto, and in further consideration of the sum of one dollar and other valuable considerations to each paid by the other, the receipt whereof is hereby respectively acknowledged,

1. The Issuer hereby agrees as follows:

(a) During the life of this agreement to sell to the Underwriter from time to time as requested, and at the price hereinafter provided, one million (1,000,000) shares of its theretofore unissued Capital Stock—and, until such time as the Capital Stock outstanding amounts to one million (1,000,000) shares, all Capital Stock from time to time in the treasury, within the limits authorized in its Agreement of Association and Articles of Organization, as from time to time altered and amended, said shares upon payment therefor by the Underwriter to be issued in the name of the Underwriter; provided, however, that unless and until this agreement shall have been approved by the stockholders of the Issuer the obligation of the Issuer under this section (a) shall be deemed to be limited to the sum of (1) the number of shares of presently authorized but unissued Capital Stock and (2) the number of shares of Capital Stock now in the treasury; and provided further that in the event of any recapitalization resulting in there being outstanding a greater or lesser number of shares for each share of Capital Stock as now constituted said figure "1,000,000" and the figures "30,000" and "100,000" in section

(b) of Article 3 hereof shall be deemed to have been adjusted to offset any effect of said recapitalization on the real amount of capital stock covered by this agreement.

(b) During the life of this agreement not to sell shares of its Capital Stock except to the Underwriter.

(c) To furnish the Underwriter with reasonable promptness any and all information, financial statements and certificates which it may reasonably request for use in connection with the sale of shares of the Issuer's Capital Stock, provided, however, that in the case of any such information, financial statements and/or certificates of such character that they are not regularly prepared for stockholders the Underwriter agrees to pay the out-of-pocket expense of the Issuer and/or its investment counsel in the furnishing thereof.

(d) To determine from time to time during the life of this agreement, in accordance with the provisions of the then current prospectus approved by the Underwriter, the net asset value and the public offering price of the shares of its Capital Stock and promptly to communicate said determinations to the Underwriter.

2. The Underwriter hereby agrees as follows:

(a) To devote reasonable time and efforts to effecting sales of shares of the Issuer's Capital Stock and, without the written consent of the Issuer first obtained, to engage in no other business.

(b) To pay to the Issuer for each share of its Capital Stock sold to the Underwriter, upon the issuance thereof, the net asset value thereof as determined by the Issuer, and communicated by it to the Underwriter, in accordance with the provisions of section (d) of Article 1 of this agreement.

(c) The public offering price of the Issuer's Capital Stock so sold to the Underwriter shall be a sum per share determined from time to time by the Issuer, and communicated by it to the Underwriter, in accordance with the provisions of section (d) of Article 1 of this agreement, provided, however, that in the case of a single investment of $25,000 or more the Underwriter may at its option reduce or eliminate that part of the public offering price which is in excess of the liquidating value and which represents the loading charge.

(d) In, and in connection with, the sale of shares of the Issuer's Capital Stock, and in offering for sale, soliciting offers to buy, advertising and in general in attempting to dispose of, such shares, to comply with any and all statutes, orders, rules and regulations of any public authority which may be applicable thereto, and at no time to sell or permit to be sold, directly or through its salesmen, any shares of said Capital Stock in any manner inconsistent with any statement contained in the Registration Statement, as then last amended, and/or in the then last prospectus, filed with the Securities and Exchange Commission in respect of the Issuer's Capital Stock and/or inconsistent with any then existing Blue Sky qualification or exemption applicable to such stock, and to indemnify the Issuer against, and to exonerate and save it harmless from, any and all loss, liability and/or damage resulting from any violation by the Underwriter or its agents of any of the foregoing provisions of this section.

(e) To pay all costs and expenses arising in connection with the initial qualification of the Issuer's Capital Stock under the Blue Sky Laws of any states in which it may at any time or from time to time request the Issuer to qualify

such Capital Stock and, except as to each of such states in which there are at the time at least fifty (50) stockholders of record of the Issuer, all costs and expenses arising in connection with the continued maintenance of such qualification.

(f) Upon ceasing for any reason to be an underwriter of Capital Stock of the Issuer pursuant to this agreement, to cause the Underwriter's name to be so changed that the word "Fidelity" is no longer a part thereof.

(g) To provide, at its expense, all facilities necessary and/or appropriate to the liquidation by stockholders of the Issuer of stock in the Issuer by way of redemption thereof.

(h) To procure forthwith from each of its present stockholders a binding agreement in favor of the Issuer whereby it shall be the duty of the person from time to time the holder of such capital stock of the Underwriter (including, without hereby limiting the generality of the foregoing, the legal representatives of any deceased holder of such stock) who desires to sell or transfer any of such stock to any person or persons other than a then stockholder or then stockholders of the Underwriter, and of any grantee or assignee of any of such stock taken or transferred upon the insolvency or bankruptcy of the stockholder or by other process or operation of law or acquired by foreclosure of any pledge or hypothecation or in violation of any of the provisions of said agreement at least ninety (90), and not more than one hundred fifty (150), days prior to such proposed sale and/or transfer or acquisition, as the case may be, to offer in writing such stock to the Issuer for purchase by any nominee or nominees (who may be one or more of the then Directors of the Issuer) at the price determined as hereinafter provided,—the word "stockholder" whenever used in this section (h) being deemed to refer to and include such holder, grantee or assignee, as the case may be—and whereby such nominee or nominees may, unless the Directors of the Issuer shall have approved the sale and/or transfer, at any time within ninety (90) days after such offer is received by them elect to purchase said stock by notifying the stockholder of his or their election to purchase and delivering to said stockholder a binding agreement to pay the price of said stock, such price to be the amount of the proposed purchase price, in the case of any offer there-

under by reason of a bona fide offer to the stockholder to purchase for cash, and otherwise to be the then fair value thereof with any dispute as to the amount of such fair value to be settled by arbitration.

3. The Issuer and Underwriter hereby mutually agree as follows:

(a) In the event that any shares of the Issuer's Capital Stock are sold by the Underwriter or its agents in violation of the provisions of section (d) of Article 2 hereof, or in the event that the Underwriter shall fail or refuse to devote reasonable time and efforts to effecting sales of shares of the Issuer's Capital Stock, the Issuer may at its election terminate this agreement forthwith by giving written notice to the Underwriter.

(b) In the event that in any six months' period ending on December 31 or July 31 (but excluding December 31, 1937), during the term hereof the number of shares of Capital Stock purchased by the Underwriter from the Issuer pursuant to this agreement shall be less than 30,000, and/or in the event that in any annual period, ending on December 31, during the term hereof the number shall be less than 100,000, the Issuer may at its election terminate this agreement forthwith by giving written notice to the Underwriter.

(c) This agreement is personal to the parties hereto and non-assignable.

IN WITNESS WHEREOF said Fidelity Fund, Inc. has caused these presents to be signed and its corporate seal hereunto to be affixed by Albert L. Sylvester, its President thereunto duly authorized, and said Fidelity Distributors, Inc. has caused these presents to be signed and its corporate seal hereunto to be affixed by Richard N. Taliaferro, its President thereunto duly authorized, all on the day and year first above written.

FIDELITY FUND, INC.

(Corporate Seal) By Albert L. Sylvester
President

FIDELITY DISTRIBUTORS, INC.

(Corporate Seal) By Richard N. Taliaferro
President

EXHIBIT B

PAUL H. DAVIS & Co.
Established 1916
Members
New York Stock Exchange
Chicago Stock Exchange
Chicago Board of Trade
Associate Member
New York Curb Exchange

10 South La Salle Street
Telephone Franklin 8622
Chicago, Ill.

Merchants Bank Building
Telephone Market 2571
Indianapolis, Ind.

INVESTMENT DEPARTMENT
CHICAGO

June 1, 1941

General Distributors of
FIDELITY FUND

FIDELITY FUND, INC.
SALES AGREEMENT

We, as exclusive general distributors (and Principal Underwriter) of the shares of Fidelity Fund, Inc., agree to sell you shares of the Fund upon the following terms:

Retail Price and Bid Price:

The bid and regular public offering price of the shares determined as set forth in the Prospectus will from time to time be furnished by the Fund, as soon as may be practicably done after the determinations thereof, through brokers' private wires to various newspapers. If it is not convenient for you to obtain such prices from either such brokers or newspapers, we will, at your request, arrange to have you receive from some source these daily quotations.

From time to time, if and to the extent permitted by law, reductions from the regular retail offering price may be allowed in cases of volume investments; but, if so, such fact and the method of determining the public offering price in such cases will be set forth in the Prospectus.

You agree not to purchase as principal or to participate as broker in the purchase of shares except from us, from the Fund, or from investors, and to pay a price not lower

than the bid price then quoted by or for the Fund, and agree not to sell as principal or to participate as broker in the sale of any shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us or the Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

Ordering of Shares:

All sales to you will be made by us, as principal, and such shares are to be resold by you, as principal, to your investor.

Orders and confirmations should be sent direct to Fidelity Fund, Inc., 35 Congress Street, Boston, Massachusetts. The Fund has been authorized to send you confirmation of orders accepted. Shares will be confirmed at the retail offering price in effect when your order is received less the dealer's discount plus expenses, if any, as outlined herein below.

Orders should be communicated as quickly as possible and confirmed by letter.

For orders placed with the principal underwriter between 4 P.M. (except Saturday) and 1 P.M. the next business day, the price of the shares of Fidelity Fund, Inc. will be based upon a calculation of the net asset value on each business day as of the close of the New York Stock Exchange (currently, 3 P.M. week days; 12 NOON Saturdays).

For orders placed with the principal underwriter from 1 P.M. to 4 P.M. on each business day, except Saturday, the offering price of the shares will be calculated so as to reflect at or about 12 NOON on that day any change in the net asset value of the Fund.

For orders placed with the principal underwriter from 1 P.M. Saturday to 1 P.M. on the next following business day, the offering price of the shares will be based upon the calculation of the net asset value as of the close of the market on that Saturday.

For these purposes a business day shall be a day on which the New York Stock Exchange is open for trading. All time shall be New York City time.

You agree that you will not withhold placing a customer's orders in such manner as to profit yourself as a result of such withholding. We, as Underwriter, will not purchase any shares except for the purpose of covering purchase orders already received, and then only at not less than the net asset value upon which the public offering price of such purchase orders is based; and you further agree that you will not purchase shares from us, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder.

We, as Underwriter, will not accept a conditional order for the shares on any basis other than at a specified definite price.

Dealer Discount:

You will receive a discount of six and one-quarter per cent (6.25%) of the regular public offering price (without taking into consideration reductions, if any, in cases of volume investments) on all shares purchased by you from us on and after June 1, 1941.

In the case of a single investment of $25,000 or more the distributing cost to the investor and the dealer's discount will be reduced to conform with the following schedule (the percentage in each case being a percentage of the applicable offering price): namely,

		Cost to Investor	Dealer's Discount
On investments of	$25,000 to $50,000	5%	4.30%
On investments over	50,000 to 75,000	4%	3.45%
On investments over	75,000 to 100,000	3%	2.55%
On investments over	100,000	2%	1.70%

If any shares are repurchased by the Fund, or by us for the account of the Fund, or are tendered for redemption within seven (7) business days (Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable therafter pay to the Fund the full amount of

the "distributing cost" on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us, as the Underwriter, or to the Fund.

Payment and Delivery:

Shares will be delivered to your order against payment in New York or Boston funds for the confirmed price less your discount plus expenses, if any, as stated in the following paragraph. Payment, by certified or cashier's check accompanying order, should be made payable to THE NATIONAL SHAWMUT BANK OF BOSTON, which bank is the Custodian and Transfer Agent for the Fund.

The Fund has arranged with The National Shawmut Bank of Boston for delivery of certificates, sight draft attached, in the stockholder's name, at your option. A power of attorney from your customer for certificates so delivered (such power to be retained by you) will make the certificate negotiable on receipt at your bank.

Collection and insurance expenses in connection with shipping certificates sight draft attached will be borne by you. In the event that you request certificates shipped sight draft attached in the name of your customer, the cost of Federal and Massachusetts State Stamp Taxes (in addition to collection and insurance expenses) will be borne by you and will be a part of the draft charges. When payment is made by an uncertified check, we or the Fund reserve the right to delay transfer until check has cleared.

Use of Prospectus—Federal Laws:

All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

Copies of the Prospectus and of the latest quarterly report issued will be supplied in reasonable quantities upon request. Copies of the "Approved List," which must be furnished to customers in compliance with so called "Blue

Sky Acts" (or Regulations issued thereunder) of certain states, will be likewise furnished upon request.

Pursuant to subdivision 9 of Section 359-e of the New York General Business Law, the undersigned, as Underwriters, agree to cause to be filed a further State Notice respecting the shares in the form required by subdivision 8 of said Section 359-e.

Miscellaneous:

We reserve the right, in our discretion, to reject in whole or in part any order received by us from you, and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action.

This Agreement shall be in substitution for any prior Selling Group Agreement between us regarding shares of Fidelity Fund, Inc.

This Agreement shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of the Fund or of this firm, and you are not authorized to act for us or the Fund or to make any representations on our or its behalf. This Agreement shall survive any changes or successions of the present firm of Paul H. Davis & Co. We shall not be liable in any way or for any matter connected herewith, except for lack of good faith.

Very truly yours,
PAUL H. DAVIS & CO.

12341

Paul H. Davis & Co.
10 South LaSalle Street,
Chicago, Illinois.

Dear Sirs:

We acknowledge receipt of the Sales Agreement regarding shares of Fidelity Fund, Inc., and hereby accept it and agree to be bound by its terms.

When shares are ordered shipped draft attached, please deliver for our account to:

_____ Bank, _____.

Please ship us _____ Prospectuses; also ship us _____ copies of latest quarterly report and _____ copies of "Approved List."

We would like to have bulletins, sales literature, etc. as issued, addressed to the following executive of our firm: (Name) _____ (Title) _____

We also hereby acknowledge receipt of Prospectus covering the shares and in making any purchases will not rely on statements made by you or your representatives, but on our own knowledge and judgment or on information in said Prospectus.

We hereby certify that we are a member of the National Association of Securities Dealers, Inc.

Firm Name _____
By _____
Street Adress _____
City _____ State _____

Dated _____, 194—.
12339

EXHIBIT C

THE CROSBY CORPORATION
35 Congress Street
Boston 9, Massachusetts

CApitol 7-7543
CApitol 7-6311

General Distributor of
Fidelity Fund, Inc.
Puritan Fund, Inc.

FIDELITY FUND, INC.
SALES AGREEMENT

October 1, 1948

Dear Sirs:

We, as a General Distributor of the shares of Fidelity Fund, Inc., agree to sell you shares of the Fund upon the following terms:

Retail Price and Bid Price

The bid and regular public offering price of the shares determined as set forth in the Prospectus will from time to time be furnished by the Fund, as soon as may be practicably done after the determinations thereof, through brokers' private wires to various newspapers. If it is not convenient for you to obtain such prices from either such brokers or newspapers, we will, at your request, arrange to have you receive from some source these daily quotations.

From time to time, if and to the extent permitted by law, reductions from the regular retail offering price may be allowed in cases of volume investments; but, if so, such fact and the method of determining the public offering price in such cases will be set forth in the Prospectus.

You agree not to purchase as principal or to participate as broker in the purchase of shares except from us, from the Fund, or from investors, and to pay a price not lower than the bid price then quoted by or for the Fund, and agree not to sell as principal or to participate as broker in the sale of any shares except at a price to the purchaser equal to the applicable offering price (determined as set forth in the Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us or the Fund at the bid price cur-

rently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

Ordering of Shares:

All sales to you will be made by us, as principal, and such shares are to be resold by you, as principal, to your investor.

Orders and confirmations should be sent direct to Fidelity Fund, Inc., 35 Congress Street, Boston 9, Massachusetts. The Fund has been authorized to send you confirmation of orders accepted. Shares will be confirmed at the retail offering price in effect when your order is received less the dealer's discount plus expenses, if any, as outlined herein below.

For orders placed with us between 4 P.M. (except Saturday) and 1 P.M. the next business day, the price of the shares of Fidelity Fund, Inc. will be based upon a calculation of the net asset value on each business day as of the close of the New York Stock Exchange (currently, 3 P.M. weekdays: 12 NOON Saturdays). For orders placed with us from 1 P.M. to 4 P.M. on each business day, except Saturday, the offering price of the charges will be calculated so as to reflect at or about 12 NOON on that day any change in the net asset value of the Fund. For orders placed with us from 1 P.M. Saturday to 1 P.M. on the next following business day, the offering price of the shares will be based upon the calculation of the net asset value as of the close of the market on that Saturday. All time shall be New York City time.

You agree that you will not withhold placing a customer's orders in such manner as to profit yourself as a result of such withholding. We, as a Distributor, will not purchase any shares except for the purpose of covering purchase orders already received, and then only at not less than the net asset value upon which the public offering price of such purchase orders is based; and you further agree that you will not purchase shares from us, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder.

We, as a Distributor, will not accept a conditional offer for the shares on any basis other than at a specified definite price.

Dealer Discount:

You will receive a discount of six percent (6%) of the regular public offering price (except in cases of volume investments) on all shares by you from us.

In the case of a single investment of $25,000 or more the sales load to the investor will be reduced to conform to the following schedule (the percentage in each case being a percentage of the applicable offering price):

		Cost to Investor	Dealer's Discount
On investments of	$ 25,000 to $ 50,000	5%	4.0%
On investments of	50,000 to 100,000	4%	3.2%
On investments of	100,000 to 200,000	3%	2.4%
On investments over	200,000	2%	1.6%

The benefit of the lower public offering prices set out above is available also to an individual or corporate trustee, guardian or other fiduciary in respect of his fiduciary accounts (including accounts in which he has co-fiduciaries) if his aggregate fiduciary purchases, made at a single time from a single dealer, total $25,000 or more

February 23, 1950

If any shares are repurchased by the fund or by us for the account of the Fund, or are tendered for redemption within seven (7) business days (Sundays and holidays not being considered business days) for confirmation to you of the original purchase order for such shares, you shall forthwith refund to us the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the "distributing cost" on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us, as a Distributor, or to the Fund.

Payment and Delivery:

Upon receipt of written confirmation from Fidelity Fund, Inc., you should make payment for the net amount shown on their invoice. Your transfer instructions should be given in the space provided (in the lower part) of the Fund's invoice.

Payment by certified or cashier's check, in New York or Boston funds, should be made payable to THE NATIONAL SHAWMUT BANK OF BOSTON, which bank is the Custodian and Transfer Agent for the Fund. When payment is made by uncertified check, the Bank or the Fund reserves the right to delay transfer until the check is cleared. The Bank requires with your transfer instructions Fidelity Fund's invoice number which is given at the top right hand corner of the Fund's invoice to you, thus identifying the particular transaction.

Use of Prospectus—Federal Laws:

All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1935, as amended, the Securities Exchange Act of 1954, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

Copies of the Prospectus and of the latest quarterly report issued will be supplied in reasonable quantities upon request.

Miscellaneous:

We reserve the right, in our discretion, to reject in whole or in part any order received by us from you, and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of Fidelity Fund, Inc. and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of the Fund or of this firm, and you are not authorized to act for us or the Fund or to make any representations on our or its behalf. This Agreement shall survive any changes or successions of the present firm of The Crosby Corporation. We shall not be liable in any way or for any matter connected herewith, except for lack of good faith.

Very truly yours,
THE CROSBY CORPORATION

We acknowledge receipt of the Sales Agreement regarding shares of Fidelity Fund, Inc., and hereby accept it and agree to be bound by its terms.

Kindly ship to us

.....Prospectus
.....Most recent financial statement
.....Other literature
addressed to the following executive of our firm:

We hereby certify that we are members of the National Association of Securities Dealers, Inc., and this agreement shall terminate automatically in the event of our ceasing to be a member in good standing of the N.A.S.D.

Firm Name .....
By .....
Street Address .....
City ..... State .....
Dated ....., 194 .....

THE CROSBY CORPORATION
53 State St., Boston 9, Mass.
Telephone CApital 7-6311
Teletype: BS 411

RAYMOND L. MYRER
President

General Distributor
Fidelity Fund, Inc.
Puritan Fund, Inc.
Fidelity Capital Fund, Inc.

FIDELITY FUND, INC. • PURITAN FUND, INC.
FIDELITY CAPITAL FUND, INC.

Sales Agreement

February 2, 1959

Dear Sirs:

We, as agent of Fidelity Fund, Inc., Puritan Fund, Inc. and Fidelity Capital Fund, Inc., agree to sell you shares of these Funds upon the following terms:

Retail Price and Bid Price:

The bid and regular public offering price of the shares, determined as set forth in the applicable Prospectus, will from time to time be furnished by or on behalf of the Funds, as soon as practicable after the determinations thereof, through brokers' private wires to various newspapers. It is not convenient for you to obtain such prices from either such brokers or newspapers, we will, at your request, arrange to have you receive from some source these twice daily quotations during the periods when such shares are continuously offered by the Funds at prices based on their net asset values.

You agree not to purchase as principal or to participate as broker in the purchase of shares except from the Funds or from investors, and to pay a price not lower than the bid price then quoted by or for the Funds. You further agree not to sell as principal or to participate as broker in the sale of any shares except at a price to the purchaser equal to the applicable offering price (determined as set forth in the applicable Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares

for the account of an investor to us or the Fund at the bid price currently quoted by or for the Funds and charging the investor a fair commission for handling the transaction.

Ordering of Shares:

All sales to you will be made through us as agent, and such shares are to be resold by you, as principal, to your investor.

Orders and confirmation should be sent direct to Fidelity Fund, Inc., to Puritan Fund, Inc. or to Fidelity Capital Fund, Inc., 35 Congress Street, Boston 9 Massachusetts. The Funds will send you confirmation of orders accepted. Shares will be confirmed at the retail offering price in effect when your order is received less the dealer's discount plus expenses, if any, as outlined below.

For orders placed with us between 4:30 P.M. and 2 P.M. the next business day, the price of the shares of the Funds will be based upon a calculation of the net asset value on each business day as of the close of the New York Stock Exchange (currently, 3:30 P.M.). For orders placed with us from 2 P.M. to 4:30 P.M. on each business day, the offering price of the shares will be calculated so as to reflect at or about 1:00 P.M. on that day any change in the net asset value of the Funds. All time shall be New York City time. The price of shares of Fidelity Capital Fund, Inc. during the initial offering of such shares shall be fixed as set forth below and the price of such shares purchased during the Future Continuous Offering of them which is expected to begin on March 2, 1959 shall be determined as described in the preceding three sentences.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares through us, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder.

We, as a Distributor, will not accept a conditional offer for the shares on any basis other than at a specified definite price. Shares of Fidelity Capital Fund, Inc. may be offered and sold during the initial offering only on a "when, as and if issued" basis, and offers to buy such shares will be accepted by us only upon that basis.

Dealer Discount and Sales Charge:

The sales charges and discounts allowed to dealers on shares purchased through us during continuous offerings are as follows (the percentage in each case being a percentage of the applicable offering price):

			Fidelity Fund, Inc. Puritan Fund, Inc.		Fidelity Capital Fund, Inc.	
	At least	But less than	Sales Charge Paid by Investor	Dealer Discount	Sales Charge Paid by Investor	Dealer Discount
On investments of	(10 shares)	$ 25,000	7.5%	6.0%	8.0%	6.5%
On investments of	$ 25,000 ...	50,000	5.0%	4.0%	5.5%	4.5%
On investments of	50,000 ...	100,000	4.0%	3.2%	4.5%	3.5%
On investments of	100,000 ...	200,000	3.0%	2.4%	3.0%	2.0%
On investments of	200,000 ...	500,000	2.0%	1.6%	2.0%	1.0%
On investments over	500,000 ...		1.0%	.8%	2.0%	1.0%

In the case of Continuous Investment and Dividend Reinvestment Plans, no commission will be paid to the dealer on any transaction for which the dealer's net sales commission is less than $1.

During the initial offering of shares of Fidelity Capital Fund, Inc. the price to dealers and the price to the public shall be as follows:

At least	But less than	Price to Dealers	Price to Public
(10 shares)	$ 25,000	$11.16	$12.00
$ 25,000	50,000	11.16	11.68
50,000	100,000	11.16	11.56
100,000	200,000	11.16	11.38
200,000		11.16	11.27

The benefit of the lower public offering prices set out above is available also to an individual purchasing for himself, his spouse and their children under the age of twenty-one, and to an individual or corporate trustee, guardian or other like fiduciary purchasing securities for a single trust estate or single fiduciary account (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) if the aggregate purchase in a single transaction totals $25,000 or more.

In addition, any of the persons enumerated above may

sign a statement of intention in the form provided by the underwriter covering purchases to be made within a period of thirteen months and thereby become eligible for the reduced sales commission applicable to the total amount purchased or to the amount of the specified intended purchase, whichever amount is less, provided such amount is not less than $25,000.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the "distributing cost" on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10 days of the date on which the certificate is delivered to us, as a Distributor, or to the Fund.

Payment and Delivery:

A detailed statement confirming your purchase of shares of the Fund will be forwarded to you. Upon receipt of such statement you will make payment for the net amount shown thereon, including transfer taxes covering sale by you as principal to your customer.

Payment, by certified or cashier's check in New York or Boston funds, should be made payable to THE NATIONAL SHAWMUT BANK OF BOSTON, which bank is the Custodian and Transfer Agent for each of the Funds. When payment is made by uncertified check, the Bank or the Funds reserve the right to delay transfer until the check is cleared. *It is not the procedure or policy of any of the Funds or of the Distributor to send capital stock draft-attached to selling group members.*

All transfer instructions filed by you must refer to THE INVOICE NUMBER SHOWN ON THE STATEMENT SENT YOU. This will minimize errors and identify the particular transaction.

In the case of sales of shares of Fidelity Capital Fund, Inc. during the initial offering, payment, by certified or cashier's check in New York or Boston funds, accompanied

by instructions as to the names and denominations of certificates, must be made to The National Shawmut Bank of Boston on or before the call date to be fixed by us of which we shall give you 5 days' notice. Confirmations of such sales shall be sent to you as soon as practicable after such shares are issued, and payment therefore made to the Fund.

Use of Prospectus—Federal Laws:

All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

Upon request copies of the respective Prospectuses and most recent financial statement issued will be supplied in reasonable quantities.

Miscellaneous:

We reserve the right to amend this agreement and, in our discretion, to reject in whole or in part any order received by us from you, and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of any of the Funds or of this firm, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except for lack of good faith.

Very truly yours,
THE CROSBY CORPORATION
By .....

We acknowledge receipt of the Sales Agreement regarding shares of Fidelity Fund, Inc., Puritan Fund, Inc. and Fidelity Capital Fund, Inc., and hereby accept it and agree to be bound by its terms.

We hereby certify that we are members of the National Association of Securities Dealers, Inc., and this Agreement shall terminate automatically in the event of our ceasing to be a member in good standing of the N.A.S.D.

Firm Name .....

By .....

Street Address .....

City ..... State .....

Dated ....., 195....

THE CROSBY CORPORATION
53 State St., Boston 9, Mass.
Telephone LAfayette 3-7600
CApitol 7-4304
General Distributor

FIDELITY FUND, INC. FIDELITY TREND FUND, INC.
PURITAN FUND, INC. FIDELITY CAPITAL FUND, INC.
Sales Agreement

January 2, 1962

Dear Sirs:

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from customers. All orders should be sent directly to the proper Fund at 35 Congress Street, Boston 9, Massachusetts which will accept and confirm such orders to you at the applicable public offering price described in the Fund's currently effective prospectus, less the Dealer Discount described below and expenses, if any. The bid and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased through us are as follows (the percentage in each case being a percentage of the applicable public offering price):

			Fidelity Fund, Inc. Puritan Fund, Inc.		Fidelity Capital Fund, Inc. Fidelity Trend Fund, Inc.	
	At least	But less than	Sales Charge Paid by Investor	Dealer Discount	Sales Charge Paid by Investor	Dealer Discount
On investments of	(see Notes)	$ 25,000	7.5%	6.0%	8.0%	6.0%
On investments of	$ 25,000 ..	50,000	5.0%	4.0%	5.0%	4.0%
On investments of	50,000 ..	100,000	4.0%	3.2%	4.0%	3.2%
On investments of	100,000 ..	200,000	3.0%	2.4%	3.0%	2.4%
On investments of	200,000 ..	500,000	2.0%	1.6%	2.0%	1.6%
On investments over	500,000 ..		1.0%	.8%	1.0%	.8%

Notes: The minimum initial investment in shares of Fidelity Fund, Inc., Fidelity Capital Fund, Inc. and Fidelity Trend Fund, Inc. must be ten (10) shares. *The minimum initial investment in shares of Puritan Fund, Inc. must be twenty (20) shares.*

In the case of Continuous Investment and Dividend Reinvestment Plans, no commission will be paid to the dealer unless the net commission after taxes on any single transaction amounts to at least $1.

The above scale is applicable to purchases made at one time by "any person," which term shall include an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purchase of shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

In addition, any of the persons enumerated above may sign a statement of intention in the form provided by us covering purchases to be made within a period of thirteen months and thereby become eligible for the reduced sales commission applicable to the total amount purchased or to the amount of the specified intended purchase, whichever amount is less, provided such amount is not less than $25,000.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of our confirmation you will pay promptly the net amounts due as shown thereon including transfer taxes due on sale by you as principal to your customer. Payment should be made by certified or cashier's check in New York or Boston funds as follows:

Fund	Custodian and Transfer Agent to whom checks should be made payable
Fidelity Fund, Inc. Puritan Fund, Inc. Fidelity Capital Fund, Inc.	The National Shawmut Bank of Boston 40 Water Street Boston, Massachusetts
Fidelity Trend Fund, Inc.	State Street Bank and Trust Company State and Congress Streets Boston, Massachusetts

ALL TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION FOR IDENTIFICATION PURPOSES. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100.

Other Transactions in Fund Shares

You agreed not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except from the Funds or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the current Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us of the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares through us, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you, and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of any of the Funds or of this corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

If the foregoing represents your understanding, please so indicate by signing in the space provided below.

Very truly yours,

THE CROSBY CORPORATION

By .....

Accepted: 196

.....
Firm Name

By .....
Authorized Officer or Partner

.....
Street Address

.....
City State

SALES AGREEMENT

The Crosby Corporation,
General Distributor
225 Franklin Street,
Boston, Mass. 02210
Executive Offices—
617-423-6150
Teletype 710-321-1209
Order Department—
617-742-5700
Cable—Crosfidel

Fidelity Fund, Inc.
Fidelity Bond-Debenture Fund, Inc.
Fidelity-Capital Fund, Inc.
Fidelity Trend Fund, Inc.
Puritan Fund, Inc.
Essex Fund, Inc.
Contrafund, Inc.
Salem Fund, Inc.
Everest Fund, Inc.

November 1, 1971

Dear Sirs:

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders to you at the applicable public offering price described in the applicable Fund's then currently effective Prospectus, less the Dealer Discount described below and expenses, if any. The bid and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as follows (the percentage in each case being a percentage of the applicable public offering price):

	At least	But less than	Sales Charge Paid by Investor	Dealer Discount (2)
On investments of ..	Note (1)	$ 10,000	8.5%	7.0%
On investments of ..	$ 10,000	25,000	8.0%	6.5%
On investments of ..	25,000	50,000	6.0%	4.8%
On investments of ..	50,000	100,000	4.5%	3.6%
On investments of ..	100,000	250,000	3.5%	2.8%
On investments of ..	250,000	500,000	2.5%	2.0%
On investments of ..	500,000	1,000,000	2.0%	1.6%
On investments over	1,000,000		1.0%	0.8%

Notes: (1) The minimum initial and subsequent investments must be as specified in the then currently effective applicable Fund Prospectus.

(2) In the case of dividends reinvested on Voluntary Accumulation Plans or under an open account, the dealer discount on any single dividend reinvestment transaction will be paid only if it amounts to at least $5.00.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the then currently effective applicable Fund Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us of the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, as amended, and the Rules and Regulations thereunder, and any applicable rules

of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representations concerning the Funds other than those which are contained in the then currently effective applicable Fund Prospectus and in such other printed information as may be subsequently issued by us as information supplemental to such Prospectus or approved by us in writing for use in connection therewith. You will not use the words "Fidelity Fund, Inc.," "Puritan Fund, Inc.," "Fidelity Capital Fund, Inc.," "Fidelity Trend Fund, Inc.," "Salem Fund, Inc.," "Everest Fund, Inc.," "Essex Fund, Inc.," "Contrafund, Inc.," "Fidelity Bond-Debenture Fund, Inc.," or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

The terms and conditions of this Agreement shall apply to the limited public offerings of the shares of Essex Fund, Inc. and Contrafund, Inc. so long as their shares are being publicly offered, except that there are no Voluntary Accumulation Plans offered in connection with such Funds. This Agreement shall terminate as to each of such Funds without the necessity of notice to you upon the termination of its respective limited public offering.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of any of the Funds or of this corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

This Agreement supersedes and cancels any prior agreement with respect to the sale of shares of any of the Funds for which we are the principal underwriter and we reserve the right to amend this Agreement at any time and from time to time or to terminate the same at any time.

We and/or the Funds in the Fidelity Group of Funds may at any time modify the sale charge and dealer discount to be paid in connection with the sale of shares of any of those Funds. In the event of any such change you agree that you will have no continuing claim to or vested interest in the level of sales charges or dealer discounts established by

this Agreement as to any shares purchased subsequent to such change.

If the foregoing represents your understanding, please so indicate by signing in the space provided below.

Very truly yours,

THE CROSBY CORPORATION

.....

Dated As Of ...., 1971 Firm .....

By .....

Authorized Signature

Address .....

SALES AGREEMENT

The Crosby Corporation,
General Distributor
225 Franklin Street,
Boston, Mass. 02110
Executive Offices—
617-423-6150
Teletype 710-321-1209
Order Department—617-742-5700
Cable-Crosfidel

Fidelity Fund, Inc.
Fidelity Capital Fund, Inc.
Fidelity Trend Fund, Inc.
Puritan Fund, Inc.
Salem Fund, Inc.
Everest Fund, Inc.

July 1, 1970

Dear Sirs:

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders to you at the applicable public offering price described in the Fund's currently effective Prospectus, less the Dealer Discount described below and expenses, if any. The bid and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as follows (the percentage in each case being a percentage of the applicable public offering price):

	At least	But less than	Sales Charge Paid by Investor	Dealer Discount
On investments of	(10 shares)	$ 10,000	8.5%	7.0%
On investments of	$ 10,000	25,000	8.0%	6.5%
On investments of	25,000	50,000	6.0%	4.8%
On investments of	50,000	100,000	4.5%	3.6%
On investments of	100,000	250,000	3.5%	2.8%
On investments of	250,000	500,000	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%
On investment over	1,000,000		1.0%	0.8%

Notes: The minimum initial investment must be ten (10) shares.
In the case of dividends reinvested on Voluntary Accumulation Plans, the dealer discount on any single dividend reinvestment transaction will be paid only if it amounts to at least $5.00.

Purchases of shares of one or more of the above Funds, made at one time by "any person," which term shall include an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved, may be aggregated for purposes of determining the respective sales charges applicable to the shares so purchased; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purpose of purchasing shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

In addition, any of the persons enumerated above may sign a statement of intention in the form provided by us covering purchases to be made within a period of thirteen months and thereby become eligible for the reduced sales charge applicable to the total amount purchased or to the amount of the specified intended purchase, whichever amount is less, provided such amount is not less than $25,000.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of confirmation you will pay promptly the net amount due as shown thereon. Payment should be made

by certified or cashier's check in New York or Boston funds to:

The Crosby Corporation
Cash Clearing Department, 3rd Floor
10 Post Office Square
Boston, Massachusetts 02109

FOR IDENTIFICATION PURPOSES ALL PAYMENTS AND TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100. WE RESERVE THE RIGHT TO HOLD YOU RESPONSIBLE FOR ANY LOSS WE MAY INCUR AS THE RESULT OF YOUR FAILURE TO MAKE ANY SUCH PAYMENTS.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the current Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us of the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders

were taken less the commission or discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representations concerning the Funds other than those which are contained in the current Fund Prospectuses and in such other printed information as may be subsequently issued by us as information supplemental to such Fund Prospectuses or approved by us in writing for use in connection therewith. You will not use the words "Fidelity Fund, Inc.," "Puritan Fund, Inc.," "Fidelity Capital Fund, Inc.," "Fidelity Trend Fund, Inc.," "Salem Fund, Inc.," "Everest Fund, Inc." or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of any of the Funds or of this corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected here-

with, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

If the foregoing represents your understanding, please so indicate by signing in the space provided below.

Very truly yours,
THE CROSBY CORPORATION

_____

Dated As Of _____ ____, 19—.

Firm _____

By _____
Authorized Signature

Address _____

_____

SALES AGREEMENT

The Crosby Corporation,
General Distributor
225 Franklin Street.
Boston, Mass. 02110
Executive Offices—
617-423-6150
Teletype 710-321-1209
Order Department—
617-742-5700
Cable-Crosfidel

Fidelity Fund, Inc.
Fidelity Capital Fund, Inc.
Fidelity Trend Fund, Inc.
Puritan Fund, Inc.
Salem Fund, Inc.
Everest Fund, Inc.

November 12, 1969

Dear Sirs:

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders, to you at the applicable public offering price described in the Fund's currently effective Prospectus, less the Dealer Discount described below and expenses, if any. The bid and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as follows (the percentage in each case being a percentage of the applicable public offering price):

	At least	But less than	Sales Charge Paid by Investor	Dealer Discount
On investments of	(10 shares)	$ 10,000	8.5%	7.0%
On investments of	$ 10,000	25,000	8.0%	6.5%
On investments of	25,000	50,000	6.0%	4.8%
On investments of	50,000	100,000	4.5%	3.6%
On investments of	100,000	250,000	3.5%	2.8%
On investments of	250,000	500,000	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%
on investments over	1,000,000		1.0%	0.8%

Notes: The minimum initial investment must be ten (10) shares.

In the case of Voluntary Accumulation Plans, no commission will be paid to the dealer unless the net commission on any single transaction amounts to at least $1.

Purchases of shares of one or more of the above Funds, made at one time by "any person," which term shall include an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved, may be aggregated for purposes of determining the respective sales charges applicable to the shares so purchased; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purpose of purchasing shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

In addition, any of the persons enumerated above may sign a statement of intention in the form provided by us covering purchases to be made within a period of thirteen months and thereby become eligible for the reduced sales charge applicable to the total amount purchased or to the amount of the specified intended purchase, whichever amount is less, provided such amount is not less than $25,000.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of confirmation you will pay promptly the net amount due as shown thereon. Payment should be made

by certified or cashier's check in New York or Boston funds to:

The Crosby Corporation
Cash Clearing Department, 3rd Floor
10 Post Office Square
Boston, Massachusetts 02109

FOR IDENTIFICATION PURPOSES ALL PAYMENTS AND TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100. WE RESERVE THE RIGHT TO HOLD YOU RESPONSIBLE FOR ANY LOSS WE MAY INCUR AS THE RESULT OF YOUR FAILURE TO MAKE ANY SUCH PAYMENTS.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the current Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us of the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders

were taken less the commission or discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representations concerning the Funds other than those which are contained in the current Fund Prospectuses and in such other printed information as may be subsequently issued by us as information supplemental to such Fund Prospectuses or approved by us in writing for use in connection therewith. You will not use the words "Fidelity Fund, Inc.," "Puritan Fund, Inc.," "Fidelity Capital Fund, Inc.," "Fidelity Trend Fund, Inc.," "Salem Fund, Inc.," "Everest Fund, Inc." or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of any of the Funds or of this corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected here-

with, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

If the foregoing represents your understanding, please so indicate by signing in the space provided below.

Very truly yours,
THE CROSBY CORPORATION

_____

Dated As Of _____, 19__.

Firm _____

By _____
Authorized Signature

Address _____

_____

THE CROSBY CORPORATION

225 Franklin Street • Boston • Mass. • 02110
• Area Code 617-423-6150

Order Department-742-5700 • Teletype 710-321-1209
• Cable-Crosfidel

Fidelity Fund, Inc.
Fidelity Capital Fund, Inc.
Dow Theory Investment Fund, Inc.
Puritan Fund, Inc.
Everest Fund, Inc.
Fidelity Trend Fund, Inc.

Dear Sirs: *Sales Agreement* May 1, 1969

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders to you at the applicable public offering price described in the Fund's currently effective prospectus, less the Dealer Discount described below and expenses, if any. The bid and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as follows (the percentage in each case being a percentage of the applicable public offering price):

			Fidelity Fund, Inc. Puritan Fund, Inc. Everest Fund, Inc.		Fidelity Trend Fund, Inc. Fidelity Capital Fund, Inc. Dow Theory Investment Fund, Inc.	
	At least	But less than	Sales Charge Paid by Investor	Dealer Discount	Sales Charge Paid by Investor	Dealer Discount
On investments of	(see Notes)	$ 10,000	7.5%	6.0%	8.5%	7.0%
On investments of	$ 10,000	25,000	7.5%	6.0%	8.0%	6.5%
On investments of	25,000	50,000	5.0%	4.0%	6.0%	4.8%
On investments of	50,000	100,000	4.0%	3.2%	4.5%	3.6%
On investments of	100,000	250,000	3.0%	2.4%	3.5%	2.8%
On investments of	250,000	500,000	2.5%	2.0%	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%	2.0%	1.6%
On investments over	1,000,000		1.0%	0.8%	1.0%	0.8%

Notes: The minimum initial investment must be ten (10) shares.
In the case of Voluntary Accumulation Plans, in commission will be paid to the dealer unless the net commission on any single transaction amounts to at least $1.

Purchases of shares of one or more of the above Funds, made at one time by "any person," which term shall include an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved, may be aggregated for purposes of determining the respective sales charges applicable to the shares so purchased; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purpose of purchasing shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

In addition, any of the persons enumerated above may sign a statement of intention in the form provided by us covering purchases to be made within a period of thirteen months and thereby become eligible for the reduced sales charge applicable to the total amount purchased or to the amount of the specified intended purchase, whichever amount is less, provided such amount is not less than $25,000.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of confirmation you will pay promptly the net amount due as shown thereon. Payment should be made

by certified or cashier's check in New York or Boston funds to:

The Crosby Corporation
Cash Clearing Department, 2nd Floor
68 Devonshire Street
Boston, Massachusetts 02109

FOR IDENTIFICATION PURPOSES ALL PAYMENTS AND TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100. WE RESERVE THE RIGHT TO HOLD YOU RESPONSIBLE FOR ANY LOSS WE MAY INCUR AS THE RESULT OF YOUR FAILURE TO MAKE ANY SUCH PAYMENTS.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the current Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us of the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders

were taken less the commission or discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representations concerning the Funds other than those which are contained in the current Fund Prospectuses and in such other printed information as may be subsequently issued by us as information supplemental to such Fund Prospectuses or approved by us in writing for use in connection therewith. You will not use the words "Fidelity Fund, Inc.," "Puritan Fund, Inc.," "Fidelity Capital Fund, Inc.," "Fidelity Trend Fund, Inc.," "Dow Theory Investment Fund, Inc.," "Everest Fund, Inc." or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of any of the Funds or of this corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith,

except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

If the foregoing represents your understanding, please so indicate by signing in the space provided below.

Very truly yours,
THE CROSBY CORPORATION

_____

Dated As Of _____, 19__.

Firm _____

By _____
Authorized Signature

Address _____

_____

THE CROSBY CORPORATION
225 Franklin Street • Boston • Mass. • 02110
• Area Code 617-423-6150
Order Department-742-5700 • Teletype 710-321-1209
• Cable-Crosfidel

Fidelity Fund, Inc. Puritan Fund, Inc.
Fidelity Capital Fund, Inc. Fidelity Trend Fund, Inc.
Dow Theory Investment Fund, Inc.
Everest Income Fund, Inc.

Dear Sirs: *Sales Agreement* November 27, 1967

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders to you at the applicable public offering price described in the Fund's currently effective prospectus, less the Dealer Discount described below and expenses, if any. The bid and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as follows (the percentage in each case being a percentage of the applicable public offering price):

			Fidelity Fund, Inc. Puritan Fund, Inc. Dow Theory Investment, Fund, Inc. Everest Income Fund, Inc.		Fidelity Trend Fund, Inc. Fidelity Capital Fund, Inc.	
			Sales Charge Paid by Investor	Dealer Discount	Sales Charge Paid by Investor	Dealer Discount
On investments of	At least (see Notes)	But less than $ 25,000	7.5%	6.0%	8.0%	6.0%
On investments of	$ 25,000	50,000	5.0%	4.0%	5.0%	4.0%
On investments of	50,000	100,000	4.0%	3.2%	4.0%	3.2%
On investments of	100,000	250,000	3.0%	2.4%	3.0%	2.4%
On investments of	250,000	500,000	2.5%	2.0%	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%	2.0%	1.6%
On investments over	1,000,000		1.0%	.8%	1.0%	.8%

Notes: The minimum initial investment must be ten (10) shares.
In the case of Continuous Investment and Dividend Reinvestment Plans, no commission will be paid to the dealer unless the net commission on any single transaction amounts to at least $1.

The above scale is applicable to purchases made at one time by "any person," which term shall include an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purpose of purchasing shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

In addition, any of the persons enumerated above may sign a statement of intention in the form provided by us covering purchases to be made within a period of thirteen months and thereby become eligible for the reduced sales commission applicable to the total amount purchased or to the amount of the specified intended purchase, whichever amount is less, provided such amount is not less than $25,000.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of confirmation you will pay promptly the net amount due as shown thereon. Payment should be made by certified or cashier's check in New York or Boston funds to:

The Crosby Corporation
Cash Clearing Department, 5th Floor
31 Milk Street
Boston, Massachusetts 02109

FOR IDENTIFICATION PURPOSES ALL PAYMENTS AND TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the current Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us of the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree than you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representations concerning the Funds other than those which are contained in the current Fund Prospectuses and in such other printed information as may be subsequently issued by us as information supplemental to such Fund Prospectuses or approved by us in writing for use in connection therewith. You will not use the words "Fidelity Fund, Inc.," "Puritan Fund, Inc.," "Fidelity Capital Fund, Inc.," "Fidelity Trend Fund, Inc.," "Dow Theory Investment Fund, Inc.," "Everest Income Fund, Inc." or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of any of the Funds or of this corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

If the foregoing represents your understanding, please so indicate by signing in the space provided below.

Very truly yours,
THE CROSBY CORPORATION

Dated As Of _____ ___, 19__.

Firm _____

By _____
Authorized Signature

Address _____

_____

THE CROSBY CORPORATION

225 Franklin Street • Boston • Mass. • 02110
• Area Code 617-423-6150

Order Department-742-5700 • Teletype 710-321-1209
• Cable-Crosfidel

Fidelity Fund, Inc. Puritan Fund, Inc.
Fidelity Capital Fund, Inc. Fidelity Trend Fund, Inc.
Dow Theory Investment Fund, Inc.
Everest Income Fund, Inc.

Dear Sirs: *Sales Agreement* June 12, 1967

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders to you at the applicable public offering price described in the Fund's currently effective prospectus, less the Dealer Discount described below and expenses, if any. The bid and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as follows (the percentage in each case being a percentage of the applicable public offering price):

			Fidelity Fund, Inc. Puritan Fund, Inc. Dow Theory Investment, Fund, Inc. Everest Income Fund, Inc.		Fidelity Trend Fund, Inc. Fidelity Capital Fund, Inc.	
			Sales Charge		Sales Charge	
	At least	But less than	Paid by Investor	Dealer Discount	Paid by Investor	Dealer Discount
On investments of	(see Notes)	$ 25,000	7.5%	6.0%	8.0%	6.0%
On investments of	$ 25,000	50,000	5.0%	4.0%	5.0%	4.0%
On investments of	50,000	100,000	4.0%	3.2%	4.0%	3.2%
On investments of	100,000	250,000	3.0%	2.4%	3.0%	2.4%
On investments of	250,000	500,000	2.5%	2.0%	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%	2.0%	1.6%
On investments over	1,000,000		1.0%	.8%	1.0%	.8%

Notes: The minimum initial investment must be ten (10) shares.

In the case of Continuous Investment and Dividend Reinvestment Plans, no commission will be paid to the dealer unless the net commission on any single transaction amounts to at least $1.

The above scale is applicable to purchases made at one time by "any person," which term shall include an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purpose of purchasing shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

In addition, any of the persons enumerated above may sign a statement of intention in the form provided by us covering purchases to be made within a period of thirteen months and thereby become eligible for the reduced sales commission applicable to the total amount purchased or to the amount of the specified intended purchase, whichever amount is less, provided such amount is not less than $25,000.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of confirmation you will pay promptly the net amounts due as shown thereon. Payment should be made by certified or cashier's check in New York or Boston funds as follows:

Fund	Clearance Agent to whom checks should be made payable
Fidelity Fund, Inc. Puritan Fund, Inc. Fidelity Capital Fund, Inc. Dow Theory Investment Fund, Inc.	The Crosby Corporation Cash Clearing Department, 5th Floor 31 Milk Street Boston, Massachusetts 02109
Fidelity Trend Fund, Inc. Everest In ome Fund, Inc.	State Street Bank and Trust Company Clearance Unit P.O. Box 2357 Boston, Massachusetts 02107

FOR IDENTIFICATION PURPOSES ALL PAYMENTS AND TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the current Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling any shares for the account of an investor to us of the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of

such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representations concerning the Funds other than those which are contained in the current Fund Prospectuses and in such other printed information as may be subsequently issued by us as information supplemental to such Fund Prospectuses or approved by us in writing for use in connection therewith. You will not use words "Fidelity Fund, Inc.," "Puritan Fund, Inc.," "Fidelity Capital Fund, Inc.," "Fidelity Trend Fund, Inc.," "Dow Theory Investment Fund, Inc.," "Everest Income Fund, Inc." or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner

of any of the Funds or of this corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

If the foregoing represents your understanding, please so indicate by signing in the space provided below.

Very truly yours,
THE CROSBY CORPORATION

Dated As Of _____ ___, 19__.

Firm _____

By _____
Authorized Signature

Address _____

_____

THE CROSBY CORPORATION
31 Milk Street • Boston 9 • Massachusetts • Liberty 2-5777
Order Department • Lafayette 3-7600
Teletype • 617-451-3970 • Cable-Crosfidel

PURITAN FUND, INC.
FIDELITY FUND, INC. FIDELITY TREND FUND, INC.
FIDELITY CAPITAL FUND, INC.
Dow Theory Investment Fund, Inc.

Dear Sirs: *Sales Agreement* May 1, 1964

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be sent directly to the proper Fund at 35 Congress Street, Boston 9, Massachusetts which will accept and confirm such orders to you at the applicable public offering price described in the Fund's currently effective prospectus, less the Dealer Discount described below and expenses, if any. The bid and public offering prices of the Funds' shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased through us are as follows (the percentage in each case being a percentage of the applicable public offering price):

			Fidelity Fund, Inc. Puritan Fund, Inc. Dow Theory Investment, Fund, Inc.		Fidelity Trend Fund, Inc. Fidelity Capital Fund, Inc.	
			Sales Charge Paid by Investor	Dealer Discount	Sales Charge Paid by Investor	Dealer Discount
On investments of	At least (see Notes)	But less than $ 25,000	7.5%	6.0%	8.0%	6.0%
On investments of	$ 25,000	50,000	5.0%	4.0%	5.0%	4.0%
On investments of	50,000	100,000	4.0%	3.2%	4.0%	3.2%
On investments of	100,000	250,000	3.0%	2.4%	3.0%	2.4%
On investments of	250,000	500,000	2.5%	2.0%	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%	2.0%	1.6%
On investments over	1,000,000		1.0%	.8%	1.0%	.8%

Notes: The minimum initial investment must be ten (10) shares.
In the case of Continuous Investment and Dividend Reinvestment Plans, no commission will be paid to the dealer unless the net commission after taxes on any single transaction amounts to at least $1.

The above scale is applicable to purchases made at one time by "any person," which term shall include an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other fiduciary of a single trust estate or single fiduciary account, (including a pension profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purchase of shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

In addition, any of the persons enumerated above may sign a statement of intention in the form provided by us covering purchases to be made within a period of thirteen months and thereby become eligible for the reduced sales commission applicable to the total amount purchased or to the amount of the specified intended purchase, whichever amount is less, provided such amount is not less than $25,000.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of our confirmation you will pay promptly the net amounts due as shown thereon including any transfer taxes due on sale by you as principal to your customer. Payment should be made by certified or cashier's check in New York or Boston funds as follows:

Fund	Custodian and Transfer Agent to whom checks should be made payable
Fidelity Fund, Inc. Puritan Fund, Inc. Fidelity Capital Fund, Inc. Dow Theory Investment Fund, Inc.	The National Shawmut Bank of Boston 40 Water Street Boston, Massachusetts
	State Street Bank and Trust Company

ALL TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION FOR IDENTIFICATION PURPOSES. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100.

Other Transactions in Fund Shares

You agreed not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except from the Funds or from investors, and to pay a price not lower than the bid price then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the current Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling my shares for the account of an investor to us of the appropriate Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares through us, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you, and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of any of the Funds or of this corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

If the foregoing represents your understanding, please so indicate by signing in the space provided below.

Very truly yours,

THE CROSBY CORPORATION

Firm .....

By .....
Authorized Signature

Address .....

PAUL H. DAVIS & CO.
Established 1916

MEMBERS
PRINCIPAL STOCK EXCHANGES

10 South La Salle Street
Telephone FRanklin 8922
Chicago 3, Ill.

General Distributor of
Fidelity Fund, Inc.
Puritan Fund, Inc.

FIDELITY FUND, INC.
SALES AGREEMENT

May 1, 1947

Dear Sirs:

We, as a General Distributor of the shares of Fidelity Fund, Inc., agree to sell you shares of the Fund upon the following terms:

Retail Price and Bid Price:

The bid and regular public offering price of the shares determined as set forth in the Prospectus will from time to time be furnished by the Fund, as soon as may be practicably done after the determinations thereof, through brokers' private wires to various newspapers. If it is not convenient for you to obtain such prices from either such brokers or newspapers, we will, at your request, arrange to have you receive from some source these daily quotations.

From time to time, if and to the extent permitted by law, reductions from the regular retail offering price may be allowed in cases of volume investments; but, if so, such fact and the method of determining the public offering price in such cases will be set forth in the Prospectus.

You agree not to purchase as principal or to participate as broker in the purchase of shares except from us, from the Fund, or from investors, and to pay a price not lower than the bid price then quoted by or for the Fund, and agree not to sell as principal or to participate as broker in the sale of any shares except at a price to the purchaser equal to the applicable offering price (determined as set forth in the Prospectus) in effect at the time of such sale, unless such sale is to the Fund or to us, provided nothing

in this paragraph shall prevent you fro.. selling any shares for the account of an investor to us or the Fund at the bid price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

Ordering of Shares:

All sales to you will be made by us, as principal, and such shares are to be resold by you, as principal, to your investor.

Orders and confirmations should be sent direct to Fidelity Fund, Inc., 35 Congress Street, Boston 9, Massachusetts. The Fund has been authorized to send you confirmation of orders accepted. Shares will be confirmed at the retail offering price in effect when your order is received less the dealer's discount plus expenses, if any, as outlined herein below.

For orders placed with us between 4 P.M. (except Saturday) and 1 P.M. the next business day, the price of the shares of Fidelity Fund, Inc. will be based upon a calculation of the net asset value on each business day as of the close of the New York Stock Exchange (currently, 5 P.M. weekdays; 12 NOON Saturdays). For orders placed with us from 1 P.M. to 4 P.M. on each business day, except Saturday, the offering price of the shares will be calculated so as to reflect at or about 12 NOON on that day any change in the net asset value of the Fund. For orders placed with us from 1 P.M. Saturday to 1 P.M. on the next following business day, the offering price of the shares will be based upon the calculation of the net asset value as of the close of the market on that Saturday. All time shall be New York City time.

You agree that you will not withhold placing a customer's orders in such manner as to profit yourself as a result of such withholding. We, as a Distributor, will not purchase any shares except for the purpose of covering purchase orders already received, and then only at not less than the net asset value upon which the public offering price of such purchase orders is based; and you further agree that you will not purchase shares from us, other than for investment, except for the purpose of covering purchase orders already received. and then only at the public offering price at which such orders were taken less the commission or discount allowed hereunder.

We, as a Distributor, will not accept a conditional offer for the shares on any basis other than at a specified definite price.

Dealer Discount:

You will receive a discount of six per cent (6%) of the regular public offering price (except in cases of volume investments) on all shares purchased by you from us.

In the case of a single investment of $50,000 or more—or a group of investors whose securities at the time of such investment are supervised by a single individual, agent, trustee, or registered investment adviser—the distributing cost to the investor and the dealer's discount will be reduced to conform with the following schedule (the percentage in each case being a percentage of the applicable offering price); namely,

	Cost to Invester	Dealer's Discount
On investments of $50,000 to $100,000.	5%	4.0%
On investments of $100,000 to $200,000	3%	2.4%
On investments over $200,000.....	2%	1.6%

If any shares are repurchased by the Fund, or by us for the account of the Fund, or are tendered for redemption within seven (7) business days (Sundays and holidays not being considered business days) after confirmation to you of the original purchase order for such shares, you shall forthwith refund to us the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the Fund the full amount of the "distributing cost" on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us, as a Distributor, or to the Fund.

Payment and Delivery:

Upon receipt of written confirmation from Fidelity Fund, Inc., you should make payment for the net amount shown on their invoice. Your transfer instructions should be given in the space provided (in the lower part) of the Fund's invoice.

Payment, by certified or cashier's check, in New York or Boston funds, should be made payable to THE NATIONAL SHAWMUT BANK OF BOSTON, which bank is the Custodian and Transfer Agent for the Fund. When payment is made by uncertified check, the Bank or the Fund reserves the right to delay transfer until the check is cleared. The Bank requires with your transfer instructions Fidelity Fund's invoice number which is given at the top right hand corner of the Fund's invoice to you, thus identifying the particular transaction.

Use of Prospectus—Federal Laws:

All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1954, as amended, the Investment Company Act of 1940, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

Copies of the Prospectus and of the latest quarterly report issued will be supplied in reasonable quantities upon request. Copies of the "Approved List," which must be furnished to customers in compliance with so-called "Blue Sky Acts" (or Regulations issued thereunder) of certain states, will be likewise furnished upon request.

Miscellaneous:

We reserve the right, in our discretion, to reject in whole or in part any order received by us from you, and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of Fidelity Fund, Inc. and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent, representative, or partner of the Fund or of this firm, and you are not authorized to act for us or the Fund or to make any representations on

our or its behalf. This Agreement shall survive any changes or successions of the present firm of Paul H. Davis & Co. We shall not be liable in any way or for any matter connected herewith, except for lack of good faith.

Very truly yours,
PAUL H. DAVIS & CO.

We acknowledge receipt of the Sales Agreement regarding shares of Fidelity Fund, Inc., and hereby accept it and agree to be bound by its terms.

Kindly ship to us

.....Prospectus
.....Most recent financial statement
.....Other literature
addressed to the following executive of our firm:

We hereby certify that we are members of the National Association of Securities Dealers, Inc., and this agreement shall terminate automatically in the event of our ceasing to be a member in good standing of the N.A.S.D.

Firm Name .....
By .....
Street Address .....
City ..... State .....
Dated ....., 194....

EXHIBIT D

Sales Agreement

THE CROSBY CORPORATION
225 Franklin Street • Boston • Mass. • 02110

Executive Offices-617-726-0400 • Cable-Crosfidel
Order Department-617-742-5700 • Teletype 710-321-0211

Fidelity Fund, Inc.
Fidelity Bond-Debenture Fund, Inc.
Fidelity Capital Fund, Inc.

Fidelity Trend Fund, Inc.

Puritan Fund, Inc.
Salem Fund, Inc.
Everest Fund, Inc.

November 1, 1972

Dear Sirs:

We are the principal underwriter of shares of the above Funds which we agree to sell to you to cover orders received by you as principal from your customers. All orders should be communicated directly to The Crosby Corporation which will accept and confirm such orders to you at the applicable public offering price computed as described in the applicable Fund's then currently effective Prospectus, less the Dealer Discount described below. The net asset value and public offering prices of the Fund's shares will be furnished from time to time to public information sources.

Sales Charge and Dealer Discount

The sales charges and discounts allowed to dealers on shares purchased are as follows (the percentage in each case being a percentage of the applicable public offering price):

	At least	But less than	Sales Charge Paid by Investor	Dealer Discount
On investments of	*	$ 10,000	8.5%	7.0%
On investments of ....$	10,000	25,000	8.0%	6.5%
On investments of	25,000	50,000	6.0%	4.8%
On investments of	50,000	100,000	4.5%	3.6%
On investments of	100,000	250,000	3.5%	2.8%
On investments of	250,000	500,000	2.5%	2.0%
On investments of	500,000	1,000,000	2.0%	1.6%
On investments over ...	1,000,000		1.0%	0.8%

* The minimum initial and subsequent investments must be as specified in the then currently effective applicable Fund Prospectus.

The schedule of sales charges and dealer discounts set forth above is applicable to purchases by "any person" (a) of a single Fund at any one time, or (b) in accordance with "Combined Purchase Privilege", "Cumulative Quantity Discount" and/or "Statement of Intention" as each of those terms is described in the then currently effective applicable Fund Prospectus. You must notify us of the total holdings, if applicable, of "any person" before he may avail himself of a reduced sales charge pursuant to the foregoing. Such notification, in writing, must be received by Crosby within four (4) business days of the placing of the order. An application form is available for this purpose. As used in this paragraph, "any person" means an individual, or an individual, his spouse and children under the age of 21, or a trustee, or other like fiduciary of a single trust estate or single fiduciary account, (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under Section 401 of the Internal Revenue Code) although more than one beneficiary is involved; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purpose of purchasing shares of any one or more of the Funds jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

If any shares are repurchased by any Fund, or by us for the account of any Fund, or are tendered for redemption within seven (7) business days (Saturdays, Sundays and holidays not being considered business days) after confir-

mation to you of the original purchase order for such shares, you shall forthwith refund to us (or we may retain) the full discount allowed to you on the original sale, and upon receipt thereof we will as soon as practicable thereafter pay to the applicable Fund the full amount of the sales charge on the original sale by us. You will be notified by us of such repurchase or redemption within ten (10) days of the date on which the certificate is delivered to us or to the Fund.

Payment and Delivery

Upon receipt of confirmation you will pay promptly the net amount due as shown thereon. Payment should be made as follows:

The Crosby Corporation
Cash Clearing Department, 3rd Floor
Ten Post Office Square
Boston, Massachusetts 02109

FOR IDENTIFICATION PURPOSES ALL PAYMENTS AND TRANSFER INSTRUCTIONS MUST REFER TO THE INVOICE NUMBER SHOWN ON THE CONFIRMATION. THE RULES OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. REQUIRE US TO NOTIFY THE ASSOCIATION OF ANY PAYMENTS NOT RECEIVED FROM YOU WITHIN TEN BUSINESS DAYS FOLLOWING THE DATE OF A TRANSACTION INVOLVING MORE THAN $100. WE RESERVE THE RIGHT TO HOLD YOU RESPONSIBLE FOR ANY LOSS WE MAY INCUR AS THE RESULT OF YOUR FAILURE TO MAKE ANY SUCH PAYMENTS.

Other Transactions in Fund Shares

You agree not to purchase as principal, or to participate as broker in the purchase of, any Fund shares except through or from us or from investors, and to pay a price not lower than the net asset value then quoted by or for the appropriate Fund. You further agree not to sell as principal, or to participate as broker in the sale of, any Fund shares except at a price to the purchaser equal to the applicable public offering price (determined as set forth in the then currently effective applicable Fund Prospectus), unless

such sale is to the Fund or to us, provided nothing in this paragraph shall prevent you from selling to us for the account of an investor any shares of the appropriate Fund at the net asset value price currently quoted by or for the Fund and charging the investor a fair commission for handling the transaction.

You agree that you will not withhold placing a customer's order in such manner as to profit yourself as a result of such withholding. You further agree that you will not purchase shares, other than for investment, except for the purpose of covering purchase orders already received, and then only at the public offering price at which such orders were taken less the dealer discount allowed hereunder. We will not accept a conditional order for shares of the Funds.

Miscellaneous

We reserve the right to amend this Agreement and, in our discretion, to reject in whole or in part any order received by us from you and to terminate this Agreement in the event of violation by you of any of its provisions or for any cause which in our opinion justifies such action. This Agreement shall be in substitution for any prior Sales Agreement between us regarding shares of any of the Funds, and shall terminate automatically in the event of your ceasing to be a member in good standing of the National Association of Securities Dealers, Inc. as you represent yourself to be. All transactions pursuant to this Agreement are subject to and must be in compliance with any and all applicable federal and state laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Investment Company Act of 1940, as amended, and the Rules and Regulations thereunder, and any applicable rules of the National Association of Securities Dealers, Inc., particularly rule 26 of the Rules of Fair Practice.

No person is authorized or permitted to give any information or make any representation concerning the Funds other than those which are contained in the then currently effective applicable Fund Prospectus and in such other printed information as may be subsequently issued by us as information supplemental to such Prospectus or approved by us in writing for use in connection therewith. You will not use the words "Fidelity Fund, Inc.," "Puritan Fund, Inc.," "Fidelity Capital Fund, Inc.," "Fidelity Trend Fund,

Inc.," "Salem Fund, Inc.," "Everest Fund, Inc.," "Fidelity Bond-Debenture Fund, Inc.," "Fidelity Group of Funds" or "The Crosby Corporation" whether in writing, by radio or television or any other advertising media without our prior written approval.

Nothing in this Agreement shall be deemed or construed to make you an employee, agent or representative of any of the Funds or of this Corporation, and you are not authorized to act for us or for any of the Funds or to make any representations on our or their behalf. We shall not be liable in any way or for any matter connected herewith, except such as may be incurred under the Securities Act of 1933, as amended, and except for lack of good faith.

This Agreement supersedes and cancels any prior agreement with respect to the sale of shares of any of the Funds for which we are the principal underwriter and we reserve the right to amend this Agreement at any time and from time to time or to terminate the same at any time.

We and/or the Funds in the Fidelity Group of Funds may at any time modify the sales charge and dealer discount to to be paid in connection with the sale of shares of any of those Funds. In the event of any such change you agree that you will have no continuing claim to or vested interest in the level of sales charges or dealer discounts established by this Agreement as to any shares purchased subsequent to such change.

Very truly yours,
THE CROSBY CORPORATION

By .....

The undersigned hereby accepts this Agreement and agrees to abide by all of its terms and conditions.

Dated ....., 19..

Firm .....
By .....
Authorized Signature
Address .....

(Title Omitted in Printing)

MOTION OF DEFENDANT VANCE, SANDERS & COMPANY, INC. TO DISMISS

Defendant Vance, Sanders & Company, Inc. ("Vance, Sanders"), pursuant to Rule 12 of the Federal Rules of Civil Procedure, moves this Court to dismiss the actions herein for failure to state a claim upon which relief can be granted, on the following grounds:

1. Section 22(d) of the Investment Company Act of 1940 (the "Act") applies to brokerage transactions in open-end investment company securities effected by dealers who are parties to a selling group agreement, and thereby prevents such transactions from being carried out at less than the public offering price described in the relevant prospectus. This result follows (a) from the language and history of § 22(d), as well as (b) from the pervasive and comprehensive nature of the regulatory scheme established by the Act over the entire process of distributing and selling open-end investment company securities.
2. Section 22(f) of the Investment Company Act of 1940 authorizes contractual arrangements prohibiting or restricting brokerage transactions effected by dealers who are parties to a selling group agreement filed as part of the registration statement of the relevant mutual fund.

The defendant Vance, Sanders further moves this Court, if, but only if, the Court is unable at this time to grant the motion to dismiss on any of the above-stated grounds, to dismiss so much of the actions as are dependent upon allegations that the Vance, Sanders Selling Group Agreement prohibits brokerage transactions at less than the applicable public offering price. The grounds for this alternative motion are as follows:

1. On its face the written Vance, Sanders Selling Group Agreement clearly does not prohibit dealers from engaging in brokerage transactions at less than the public offering price.
2. Should the Court interpret the Selling Group Agreement as prohibiting such transactions, the crucial

provision of the Selling Group Agreement (¶ 5(a)) must be recognized as substantially identical to Rule of Fair Practice 26(e) of the National Association of Securities Dealers, Inc. ("NASD"). Antitrust liability cannot be based on provisions in a selling group agreement that are substantially identical to a validly promulgated NASD Rule of Fair Practice which has not been abrogated by the Securities and Exchange Commission.

The grounds in support of this Motion are more fully set forth in the memorandum which is filed herewith pursuant to Rule 9(b) of the Rules of this Court.

VANCE, SANDERS & COMPANY, INC.
By .....
Herbert J. Miller
Miller, Cassiday, Larroca & Lewin
1320 19th Street, N.W.
Washington, D.C. 20036
(202) 293-6400

.....
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110
(617) 423-6100

May 29, 1973

(Title Omitted in Printing)

MOTION TO DISMISS

Defendants Wellington Management Company and Wellington Fund, Inc.[1] move this Court to dismiss the complaints herein for failure to state a claim upon which relief can be granted because:

1. The allegedly unlawful conduct is exempt from antitrust liability by the provisions of Section 22(d) of the Investment Company Act of 1940.

2. The allegedly unlawful activities of defendants are within the exclusive jurisdiction of the Securities and Exchange Commission.

The grounds in support of this motion are fully set forth in the Memorandum of Points and Authorities which is filed herewith pursuant to Rule 9(b) of the Rules of this Court.

WILLIAMS & JENSEN, P.C.

/s/ Robert E. Jensen
ROBERT E. JENSEN
1130 17th Street, N.W.
Washington, D.C. 20036
(202) 223-6150

HILL, CHRISTOPHER & PHILLIPS, P.C.

/s/ Richard M. Phillips
RICHARD M. PHILLIPS

/s/ Robert A. Wittie
ROBERT A. WITTIE
2000 L Street, N.W.
Washington, D.C. 20036
(202) 833-3990

Attorneys For
Wellington Management Company
Wellington Fund, Inc.

[1] Wellington Fund, Inc. is not named as a defendant in *Haddad v. The Crosby Corporation, et al.*

(Title Omitted in Printing)

MOTION OF BACHE & CO., ET AL. TO DISMISS

Defendants Bache & Co. Incorporated; Dean Witter & Co. Incorporated; duPont Glore Forgan Incorporated; E. F. Hutton & Company Inc.; Hornblower & Weeks-Hemphill Noyes Incorporated; Merrill Lynch, Pierce, Fenner & Smith Inc.; Paine, Webber, Jackson & Curtis Incorporated; Reynolds Securities Inc.; and Walston & Co. Inc. ("the defendant dealers"), pursuant to Rule 12 of the Federal Rules of Civil Procedure, move this Court to dismiss the Complaint herein for failure to state a claim upon which relief can be granted, and in support thereof urge as follows:

1. Section 22(d) of the Investment Company Act of 1940 creates an exemption and immunity from antitrust liability for the defendant dealers' conduct in maintaining the public offering price of investment company securities.
2. Section 22(f) of the Investment Company Act of 1940 creates an exemption and immunity from antitrust liability for any restrictions on transferability imposed by the defendant dealers' agreements for distribution of investment company securities.
3. Under the Investment Company Act, Congress subjected the acts and practices of the defendant dealers in the distribution of investment company securities to continuous and pervasive regulation by the SEC, and the NASD acting under the SEC's supervision; and accordingly the SEC has exclusive jurisdiction to regulate those acts and practices, and such acts and practices are exempt and immune from the claims herein alleged for violation of the federal antitrust laws.

The defendant dealers further move this Court, if, but only if, the Court does not grant their motion to dismiss at this time, to refer the case to the SEC, pursuant to its primary jurisdiction over such matters.

The grounds in support of this Motion are more fully set

forth in the memorandum which is filed herewith pursuant to Rule 9(b) of the Rules of this Court.

HOGAN & HARTSON

By: .....
Lee Loevinger

.....
Owen M. Johnson, Jr.

.....
Timothy J. Bloomfield

.....
David J. Saylor
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
202-298-5500

Attorneys for defendants

Bache & Co. Incorporated
Dean Witter & Co. Incorporated
duPont Glore Forgan Incorporated
E. F. Hutton & Company Inc.
Hornblower & Weeks-Hemphill Noyes Incorporated
Merrill Lynch, Pierce, Fenner & Smith Inc.
Paine, Webber, Jackson & Curtis Incorporated
Reynolds Securities Inc.
Walston & Co. Inc.

BROWN, WOOD, FULLER, CALDWELL & IVEY
One Liberty Plaza
New York, New York 10006

Of counsel for defendant
Merrill Lynch, Pierce, Fenner & Smith Inc.

DATED: May 29, 1973

(Title Omitted in Printing)

AFFIDAVIT

DANIEL R. HUNTER, being first duly sworn, deposes and says:

1. I am the attorney in charge of preparing this case for trial on behalf of the plaintiff, United States of America.

2. Beginning in April, 1972 the Department of Justice commenced an investigation into possible antitrust violations in the distribution of mutual fund shares. Certain documents were requested and received from the files of a number of mutual fund underwriters, a number of broker/dealers, the National Association of Securities Dealers ("NASD") and other parties.

3. The documents received, which, on information and belief, were prepared or received in the regular course of business by the above-mentioned parties, tend to prove the facts set forth in "Plaintiff's First Request for Admissions" a copy of which has been filed with the court and another copy of which is attached hereto as Exhibit A. On information and belief, the facts stated in Exhibit A are true and are incorporated as if stated in full herein.

4. In order to show that the statements set forth in Exhibit A have a reasonable basis, plaintiff hereby attaches certain documents as exhibits to this affidavit. These documents will be identified as to source and subject matter in the succeeding paragraphs of this affidavit.

5. Government exhibits ("GX") 1 through 6 were obtained from the Securities and Exchange Commission. GX 1-3 are specimen share certificates of defendant mutual funds; GX 4 is a specimen certificate of Quasar Associates, Inc., included for purposes of comparison. GX 5 consists of a recent exchange of correspondence between a mutual fund advisor/underwriter and an SEC official reaffirming the Commission's position that brokerage transactions, at less than the public offering price, are legal under section 22(d) of the Investment Company Act. GX 6 is a memorandum of meeting between SEC staff and NASD officials concerning the NASD's effort to Interpret an NASD Rule in a manner calculated to inhibit secondary markets in mutual fund shares. See GX 14-19.

6. GX 7-9 are pages from mutual fund prospectuses. GX

7 and 8 show prospectus representations as to the transferability of Fidelity Fund shares and Massachusetts Investors Growth Stock Fund shares, respectively. GX 9, included for purposes of comparison, shows the prospectus representation as to limitations on transferability of Quasar Associates shares.

7. GX 10 and 11 were obtained from defendant broker-dealers Paine, Webber, Jackson & Curtis and Merrill Lynch, Pierce, Fenner & Smith respectively. They are pages from internal operating manuals showing both firms utilization of the secondary dealer market ("grey market") to acquire shares of mutual funds with which they did not have signed distribution agreements.

8. GX 12 and 13 were obtained from defendant underwriters Vance, Sanders and Company and Crosby Corporation, respectively. GX 12, written by Henry Vance, first chairman of the NASD's Investment Trust Committee, shows awareness of the competitive impact of secondary market activities and the anticompetitive aspects of selling group agreements. GX 13 illustrates awareness of the applicability of the antitrust laws to restrictive provisions in underwriter-dealer contracts.

9. GX 14-30 were obtained from defendant National Association of Securities Dealers. GX 14-19 concern the NASD's effort to Interpret an NASD Rule in a manner calculated to inhibit secondary market activities. The effort was spearheaded by the Investment Companies Committee ("ICC") despite the admonition of one of its members that the relevant Rule would not support the desired Interpretation, GX 14. The proposal was carried to the SEC staff which rejected it for want of statutory support, GX 15, (marginal motation), GX 16, and GX 6. Having been rebuffed in an effort accomplish its objective through prescribed procedures, the NASD's ICC decided to contact all fund underwriters and distributors and urge the insertion in distribution agreements, and the strict enforcement of, restrictive provisions of the type here challenged, GX 17 and GX 19. A letter embodying the proposal was sent June 22, 1959, GX 18.

10. GX 20-23 illustrate defendants' awareness of the existence, utility, and legality of the inter-dealer market. GX 20 is a transcript of a conference presided over by Henry Vance. The conference apparently was attended by

the NASD's District Secretaries and occurred circa 1943. GX 23 is a memorandum from Ray Moulden, secretary of the NASD Investment Companies Committee to Wallace Fulton, executive director of the NASD. GX 24-30 illustrate defendants' acknowledgment of the legality of brokerage transactions. See also GX 20. Robert L. Cody, author of GX 29-30, was a member of the NASD's Investment Companies Committee.

/s/ Daniel R. Hunter
DANIEL R. HUNTER

(Jurat Omitted in Printing)

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST that attached are full, true and complete copies of:

Exhibits Nos. 4 and 4a as contained in amendment filed January 19, 1965 to registration statement filed with this Commission January 12, 1959 by Massachusetts Investors Growth Stock Fund, Inc., pursuant to the provisions of the Securities Act of 1933, as amended, under File No. 2-14077.

on file in this Commission

June 4, 1973
(Date)

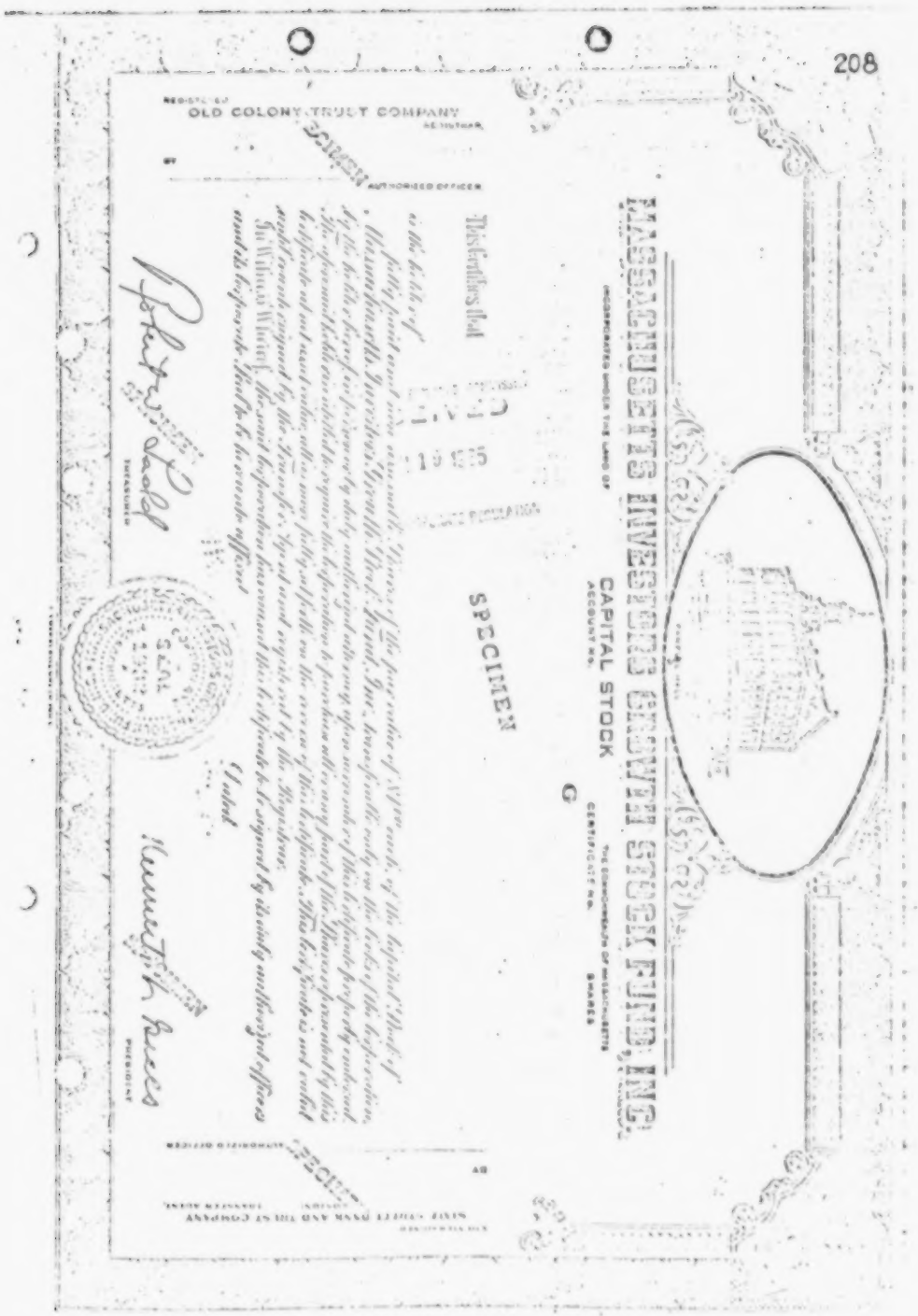
ERNEST L. DESSECKER
RECORDS & SERVICE OFFICER

It is hereby certified that ERNEST L. DESSECKER, Records Officer of the Securities and Exchange Commission, Washington, D.C., which Commission was created by the Securities Exchange Act of 1934 (15 USCA Sec. 78a et seq.), is official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchange Act of 1934, that was such official custodian at the time of executing the above attestation, and that he, and his successors, CHARLES A. MOORE, Deputy Records Officer, are authorized to execute the above attestation.

By the Commission

Secretary

BEST COPY AVAILABLE



BEST COPY AVAILABLE

MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.

THE REPURCHASE PROVISION CONTAINED IN ARTICLE VII OF THE AGREEMENT OF ASSOCIATION AND ARTICLES OF ORGANIZATION AS IN EFFECT FEBRUARY 27, 1959, PROVIDES AS FOLLOWS:

(3) IN CASE ANY SHAREHOLDER IN THE CORPORATION AT ANY TIME DESIRES TO DISPOSE OF SHARES RECORDED IN HIS NAME, HE MAY DEPOSIT HIS CERTIFICATE OR CERTIFICATES THEREFOR DULY ENDORSED OR ACCOMPANIED BY A PROPER INSTRUMENT OF TRANSFER AT THE OFFICE OF THE CORPORATION TOGETHER WITH A REQUEST THAT THE CORPORATION PURCHASE THE SHARES REPRESENTED THEREBY IN ACCORDANCE WITH THIS ARTICLE VII (4). THE SHAREHOLDER SO DEPOSITING HIS CERTIFICATE OR CERTIFICATES SHALL BE ENTITLED TO REQUIRE THE CORPORATION TO PURCHASE, AND THE CORPORATION SHALL PURCHASE, HIS SAID SHARES, BUT ONLY AT THE NET ASSET VALUE OF SUCH SHARES (AS DEFINED IN ARTICLE VIII HEREOF) DETERMINED BY OR ON BEHALF OF THE BOARD OF DIRECTORS AS OF THE CLOSE OF BUSINESS ON THE DAY ON WHICH SUCH SHARES ARE SO DEPOSITED IF THAT IS A DAY OTHER THAN SATURDAY, UPON WHICH A DETERMINATION OF NET ASSET VALUE AS OF THE CLOSE OF BUSINESS IS REQUIRED BY SAID ARTICLE VIII TO BE MADE OR IS MADE AND IF SUCH SHARES ARE DEPOSITED AT OR PRIOR TO TWELVE O'CLOCK NOON ON THAT DAY. IF THE DAY OF DEPOSIT IS NOT SUCH A DAY OR IF SUCH SHARES ARE DEPOSITED AFTER TWELVE O'CLOCK NOON, THEN THE PURCHASE PRICE SHALL BE THE NET ASSET VALUE PER SHARE AS OF THE CLOSE OF BUSINESS ON THE FIRST DAY UPON WHICH A DETERMINATION OF NET ASSET VALUE IS SO MADE OR REQUIRED TO BE MADE NEXT SUCCEEDING THE DATE ON WHICH SUCH SHARES ARE SO DEPOSITED.

PAYMENT FOR SUCH SHARES SHALL BE MADE BY THE CORPORATION TO THE SHAREHOLDER OF RECORD WITHIN SEVEN (7) DAYS AFTER THE DATE UPON WHICH THE SHARES ARE DEPOSITED; IF THE DETERMINATION OF THE PURCHASE PRICE IS POSTPONED BEYOND THE DATE ON WHICH IT WOULD NORMALLY OCCUR BY REASON OF A DECLARATION BY THE BOARD OF DIRECTORS SUSPENDING DETERMINATION OF NET ASSET VALUE PURSUANT TO SAID ARTICLE VIII, THE RIGHT OF THE SHAREHOLDER TO HAVE HIS SHARES PURCHASED BY THE CORPORATION SHALL BE SIMILARLY SUSPENDED, AND HE MAY WITHDRAW HIS CERTIFICATE OR CERTIFICATES FROM DEPOSIT IF HE SO ELECTS; OR IF HE DOES NOT SO ELECT, THE PURCHASE PRICE SHALL BE THE NET ASSET VALUE OF THE SHARES DEPOSITED DETERMINED AS OF THE CLOSE OF BUSINESS UPON THE FIRST DAY AFTER THE SUSPENSION UPON WHICH SUCH A DETERMINATION IS MADE, AND PAYMENT THEREFOR SHALL BE MADE WITHIN SEVEN (7) DAYS AFTER SUCH FIRST DAY.

(4) THE CORPORATION MAY, HOWEVER, PURCHASE SHARES OF THE CORPORATION BY AGREEMENT WITH ANY OWNER THEREOF (1) AT A PRICE NOT EXCEEDING THE NET ASSET VALUE PER SHARE IN EFFECT AT THE TIME WHEN THE PURCHASE OR CONTRACT OF PURCHASE IS MADE OR (2) AT A PRICE NOT EXCEEDING THE NET ASSET VALUE PER SHARE TO BECOME EFFECTIVE AT SOME LATER TIME.

(5) SHARES PURCHASED BY THE CORPORATION EITHER PURSUANT TO PARAGRAPH (3) OR PARAGRAPH (4) OF THIS ARTICLE VII SHALL BE DEEMED TREASURY SHARES AND MAY BE RESOLD BY THE CORPORATION.

FOR VALUE RECEIVED _____ HEREBY SELL, ASSIGN AND TRANSFER UNTO

_____

_____

_____ SHARES

OF THE MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC. REPRESENTED BY THE WITHIN CERTIFICATE AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT

_____ ATTORNEY

TO TRANSFER THE SAID STOCK ON THE BOOKS OF THE SAID FUND WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED _____ 19__

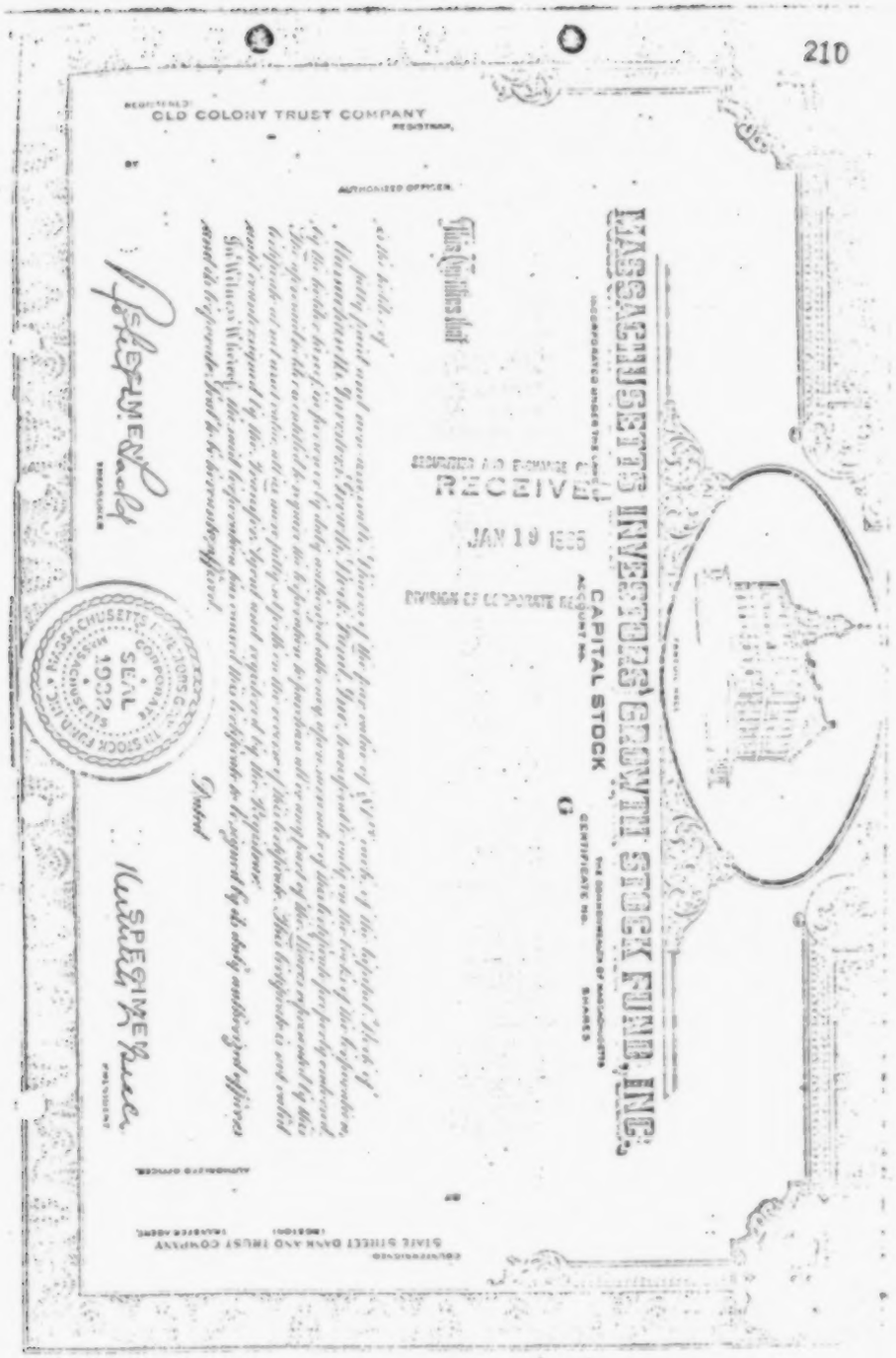
(SIGN HERE) _____

SIGNATURE GUARANTEE

_____

SIGNATURE MUST BE GUARANTEED BY A NATIONAL BANK OR TRUST COMPANY OR BY A MEMBER FIRM OF THE BOSTON OR NEW YORK STOCK EXCHANGE.

BEST COPY AVAILABLE



BEST COPY AVAILABLE

MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC.

THE REPURCHASE PROVISION CONTAINED IN ARTICLE VII OF THE AGREEMENT OF ASSOCIATION A ARTICLES OF ORGANIZATION AS IN EFFECT FEBRUARY 27, 1939, PROVIDES AS FOLLOWS:

(a) IN CASE ANY SHAREHOLDER IN THE CORPORATION AT ANY TIME DESIRES TO DISPOSE OF SHARES RECORDED IN HIS NAME, HE MAY DEPOSIT HIS CERTIFICATE OR CERTIFICATES THEREFOR DULY ENDORSED OR ACCOMPANIED BY A PROPER INSTRUMENT OF TRANSFER AT THE OFFICE OF THE CUSTODIAN, TOGETHER WITH A REQUEST THAT THE CORPORATION PURCHASE THE SHARES REPRESENTED THEREBY IN ACCORDANCE WITH THIS ARTICLE VII. IN THE SHAREHOLDER AS DEPOSITING HIS CERTIFICATE OR CERTIFICATES SHALL BE ENTITLED TO RECEIVE THE CORPORATION TO PURCHASE, AND THE CORPORATION SHALL PURCHASE, HIS SAID SHARES, BUT ONLY AT THE NET ASSET VALUE OF SUCH SHARES AS DEFINED IN ARTICLE VIII HEREOF, DETERMINED AT OR ON BEHALF OF THE BOARD OF DIRECTORS AS OF THE CLOSE OF BUSINESS ON THE DAY ON WHICH SUCH SHARES ARE TO BE DEPOSITED (IF THAT IS A DAY, OTHER THAN SATURDAY, UPON WHICH A DETERMINATION OF NET ASSET VALUE AS OF THE CLOSE OF BUSINESS IS REQUIRED AT SAID ARTICLE VIII TO BE MADE OR IS MADE AND IF SUCH SHARES ARE DEPOSITED AT OR PRIOR TO TWELVE O'CLOCK NOON ON THAT DAY; IF THE DAY OF DEPOSIT IS NOT SUCH A DAY OR IF SUCH SHARES ARE DEPOSITED AFTER TWELVE O'CLOCK NOON, THEN THE PURCHASE PRICE SHALL BE THE NET ASSET VALUE PER SHARE AS OF THE CLOSE OF BUSINESS ON THE FIRST DAY UPON WHICH A DETERMINATION OF NET ASSET VALUE IS SO MADE OR REQUIRED TO BE MADE NEXT SUCCEEDING THE DATE ON OR AS OF WHICH SUCH SHARES ARE SO DEPOSITED.

PAYMENT FOR SUCH SHARES SHALL BE MADE BY THE CORPORATION TO THE SHAREHOLDER OF RECORD WITHIN SEVEN (7) DAYS AFTER THE DATE UPON WHICH THE SHARES ARE DEPOSITED. IF THE DETERMINATION OF THE PURCHASE PRICE IS POSTPONED BEYOND THE DATE ON WHICH IT WOULD NORMALLY OCCUR BY REASON OF A DECLARATION BY THE BOARD OF DIRECTORS SUSPENDING DETERMINATION OF NET ASSET VALUE PURSUANT TO SAID ARTICLE VIII, THE RIGHT OF THE SHAREHOLDER TO HAVE HIS SHARES PURCHASED BY THE CORPORATION SHALL BE SIMILARLY SUSPENDED AND HE MAY WITHDRAW HIS CERTIFICATE OR CERTIFICATES FROM DEPOSIT IF HE SO ELECTS, OR IF HE DOES NOT SO ELECT, THE PURCHASE PRICE SHALL BE THE NET ASSET VALUE OF THE SHARES DEPOSITED, DETERMINED AS OF THE CLOSE OF BUSINESS UPON THE FIRST DAY AFTER THE SUSPENSION UPON WHICH SUCH A DETERMINATION IS MADE, AND PAYMENT THEREFOR SHALL BE MADE WITHIN SEVEN (7) DAYS AFTER SUCH FIRST DAY.

(b) THE CORPORATION MAY, HOWEVER, PURCHASE SHARES OF THE CORPORATION BY AGREEMENT WITH THE OWNER THEREOF (1) AT A PRICE NOT EXCEEDING THE NET ASSET VALUE PER SHARE IN EFFECT AT THE TIME WHEN THE PURCHASE OR CONTRACT OF PURCHASE IS MADE OR (2) AT A PRICE NOT EXCEEDING THE NET ASSET VALUE PER SHARE TO BECOME EFFECTIVE AT SOME LATER TIME.

(c) SHARES PURCHASED BY THE CORPORATION EITHER PURSUANT TO PARAGRAPH (a) OR PARAGRAPH (b) OF THIS ARTICLE VII SHALL BE DEEMED TREASURY SHARES AND MAY BE RESOLD BY THE CORPORATION.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though the words were written out in full according to applicable laws:

TEN IN COM - as tenants in common
TEN BY ENT - as tenants by the entireties
JT WROS - as joint tenants with right of survivorship and not as tenants in common
UNIF GIFTS TO M A - Uniform Gifts to Minors Act

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED _____ HEREBY SELL, ASSIGN AND TRANSFER UNTO

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

_____

_____

_____ SHARES OF THE MASSACHUSETTS INVESTORS GROWTH STOCK FUND, INC. REPRESENTED BY THE WITHIN CERTIFICATE AND DO HEREBY IRREVOCABLY CONSTITUTE AND APPOINT

_____ ATTORNEY

TO TRANSFER THE SAID STOCK ON THE BOOKS OF THE SAID FUND WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED _____ 19____

(SIGN HERE) _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

SIGNATURE GUARANTEE

_____

SIGNATURE MUST BE GUARANTEED BY A BANK, TRUST COMPANY OR TRUST COMPANY OR BY A MEMBER FIRM OF THE NEW YORK STOCK EXCHANGE

BEST COPY AVAILABLE

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST that attached is a full, true and complete copy of:

Exhibit No. A as contained in quarterly report on Form N-1Q for quarter ended September 30, 1971 filed with this Commission October 29, 1971 by Wellington Fund, Inc., pursuant to the provisions of the Investment Company Act of 1940, under File No. 811-121.

on file in this Commission

June 4, 1973
(Date)

ERNEST L. DEERECKER
RECORDS & SERVICE OFFICER

It is hereby certified that ERNEST L. DEERECKER, Records Officer of the Securities and Exchange Commission, Washington, D.C., which Commission was created by the Securities Exchange Act of 1934 (15 U.S.C.A. Sec. 78a et seq.), is official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchange Act of 1934, and was such official custodian at the time of executing the above attestation, and that he, and his successors, CHARLES A. MOORE, Deputy Records Officer, are authorized to execute the above attestation.

By the Commission

Secretary

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Exhibit No. A

213 2149

CERTIFICATE NO.

SHARES

WELLINGTON FUND

A WELLINGTON MANAGEMENT COMPANY MUTUAL FUND

CUSIP 949527 10 5

DATA SPECTRANCE INC

BEST COPY AVAILABLE

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM—as tenants in common
TEN ENT—as tenants by the entireties
JT TEN —as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT— ..... Custodian ..... (Cust) ..... (Minor) under Uniform Gifts to Minors Act ..... (State)

Additional abbreviations may also be used though not in the above list.

For value received, _____ *hereby sell, assign and transfer unto*

PLEASE INSERT SOCIAL SEC. R TY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE

_____

_____

_____ *Shares*

of the capital stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ *Attorney*

to transfer the said stock on the books of the within named Corporation, with full power of substitution in the premises.

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

SIGNATURE GUARANTEED

_____

SIGNATURE OF SELLER MUST BE GUARANTEED

THIS SPACE MUST NOT BE COVERED IN ANY WAY

BEST COPY AVAILABLE

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST that attached is a full, true and complete copy of:

Exhibit 2. as contained in registration statement filed with this Commission March 9, 1951 by Fidelity Fund, Inc., pursuant to the provisions of the Securities Act of 1933, as amended, under File No. 2-6850

on file in this Commission.

June 7, 1973
(Date)

ERNEST L. DESSECKER
RECORDS & SERVICE OFFICER

It is hereby certified that ERNEST L. DESSECKER, Records Officer of the Securities and Exchange Commission, Washington, D.C., which Commission was created by the Securities Exchange Act of 1934 (15 USCA Sec. 78a et seq.), is official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 219 of the Securities Exchange Act of 1934, and was such official custodian at the time of executing the above attestation, and that he, and his successors, CHARLES A. MOORE, Deputy Records Officer, are authorized to execute the above attestation.

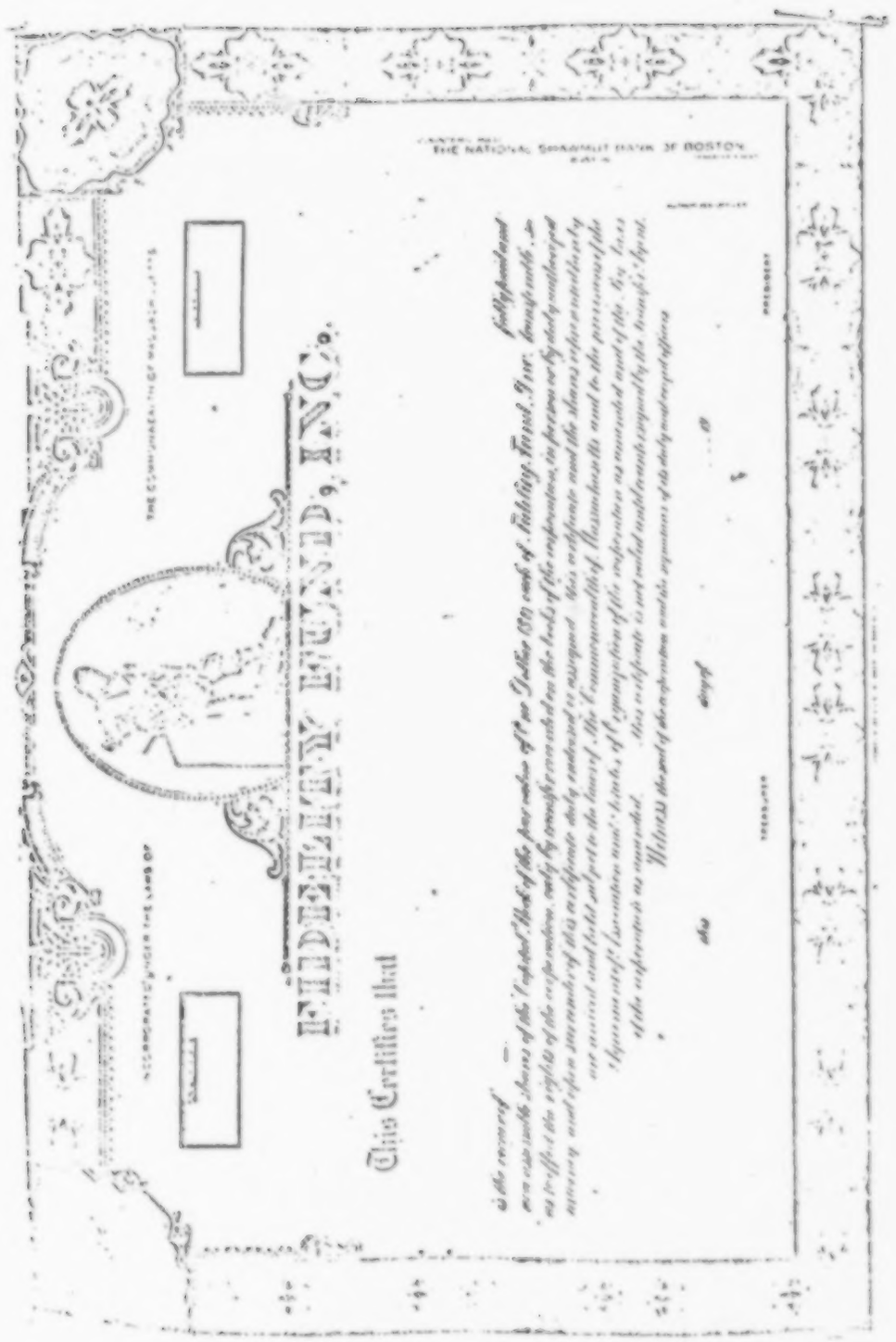
By the Commission

Secretary

EXHIBIT
3

BEST COPY AVAILABLE

EXHIBIT 2.



BEST COPY AVAILABLE

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST that attached is a full, true and complete copy of:

Exhibit No. A-42-1 as contained in amendment filed December 27, 1968 to notification on Form N-8A filed with this Commission August 15, 1968 by Quasar Associates, Inc., pursuant to the Investment Company Act of 1940, under File No. 811-1716

on file in this Commission

June 12, 1973
(Date)

ERNEST L. DESSEUCER
RECORDS & SERVICE OFFICER

It is hereby certified that ERNEST L. DESSEUCER, Records Officer of the Securities and Exchange Commission, Washington, D.C., that Commission was created by the Securities Exchange Act of 1934 (15 USCA Sec. 78a et seq.), is official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission pursuant to the provisions of the Securities Act of 1933 are transferred to this Commission in accordance with Section 213 of the Securities Exchange Act of 1934, and was such official custodian on [illegible] and that he, and his successors, CHARLES A. HOPKINS, Deputy Records Officer, are authorized to execute the above attestation.

By [illegible]

BEST COPY AVAILABLE

QUASAR ASSOCIATES, INC.

PROVISIONS OF CERTIFICATE OF INCORPORATION AND BY-LAWS RESTRICTING TRANSFERABILITY OF SHARES

Certificate of Incorporation

FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is [illegible] all of which shall be shares of Common Stock of the par value of ten cents ($.10) each, amounting in the aggregate to [illegible] dollars ($[illegible]). Such shares may be issued from time to time as the Board of Directors may determine and for such consideration as may be fixed from time to time by the Board of Directors, provided that the consideration so fixed is not less than the par value thereof. Such shares may be issued for such consideration, whether in cash or other property, real or personal, including, without limitation, treasury shares and shares of its own capital stock, as may be determined from time to time by the Board of Directors, to the extent permitted by law. Shares so issued for which the consideration so fixed has been paid or delivered shall be fully paid stock and their holders shall not be liable for any further call or assessment or any other payment thereon. In the absence of actual fraud in the transaction, the judgment of the Board of Directors as to the value of such consideration received for shares of stock shall be conclusive. Any and all shares of stock may be issued by the Board of Directors as a share dividend in respect of shares of stock of any other class or classes, or any series thereof, to the holders of shares of stock of this or any other class or classes or any series thereof, to such extent and in such manner as may be permitted by law. Shares subject to redemption may be issued only upon such conditions and upon such terms as may be permitted by law.

Subject to compliance with applicable law, the Corporation may purchase its shares of stock to such extent and in such manner as the Board of Directors shall determine and as shall be permitted by law. Any such purchase shall not be deemed a dividend within the meaning of Article SEVENTH hereof.

By-Laws

Section 7 of Article VII. (a) The Board of Directors in its sole and absolute discretion may refuse to permit any transfer of shares of stock of the Corporation to be made on the books of the Corporation if such transfer would, in the opinion of counsel to the Corporation, be prohibited by any applicable law or governmental regulation, or would require the consent of any governmental authority which cannot be obtained on terms satisfactory to the Board of Directors, or would be prohibited by any agreement to which the Corporation is a party, or would violate any restriction on transfer imposed by the Corporation. The Board of Directors may require that shares of stock which are the subject of any transfer to be made on the books of the Corporation be surrendered to the Corporation for cancellation before a new certificate for the shares so transferred shall be issued or new shares recorded on the books of the Corporation. The Board of Directors may make such additional rules and regulations as it may deem necessary or appropriate with respect to the issue, transfer and registration of shares of stock of the Corporation.

(b) The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

(c) Upon the death of a holder of shares of stock of the Corporation, the executors or administrators of such holder's estate shall have the right to require the transfer of such shares of stock to them upon the books of the Corporation upon the surrender to the Corporation of the certificate or certificates representing such shares of stock, properly endorsed, and the production of such evidence of their authority to receive such shares of stock as may be required by the Board of Directors.

(d) The Board of Directors may from time to time establish procedures whereby the beneficial ownership of shares of stock of the Corporation held by banks, brokers, fiduciaries or other nominees may be determined by the Corporation.

(e) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(f) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(g) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(h) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(i) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(j) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(k) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(l) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(m) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(n) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(o) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(p) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(q) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(r) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(s) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(t) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(u) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(v) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(w) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(x) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(y) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

(z) The Board of Directors may establish a procedure whereby a stockholder of the Corporation may request in writing that the Corporation notify such stockholder of any proposed issue by the Corporation of any class or series of stock or any proposed transfer of treasury shares of any class or series of stock which may be held by the Corporation at the time of such proposed issue or transfer, whether or not such class or series of stock has been theretofore authorized by the Certificate of Incorporation of the Corporation, as the same may be amended from time to time, or by any certificate amendatory thereof or supplemental thereto, and whether or not such class or series of stock is then entitled to participate in the profits and assets of the Corporation, and may establish a procedure whereby a stockholder of the Corporation may waive in writing the right to receive such notice with respect to any or all proposed issues or transfers of stock which may be specified in such waiver. For purposes of this section, the amount of any such proposed issue shall be deemed to be the fair market value of the shares to be issued as determined by the Board of Directors of the Corporation, and the amount of any such proposed transfer shall be deemed to be the fair market value of the shares to be transferred as determined by the Board of Directors of the Corporation, provided that such determination shall be made not more than sixty days prior to such proposed transfer.

For Value Received, ...hereby sell, assign and transfer

Please insert social security or other identifying number of assignee

.....

unto.....
(Please print or typewrite name and address of assignee)

.....

.....

.....shares

of the Common Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint.....

.....Attorney to transfer the said stock on the books of the within-named Corporation with full power of substitution in the premises.

Dated,.....

.....

NOTICE: The signature to this assignment must correspond with the name as written upon the face of this certificate, in every particular, without alteration or enlargement, or any change whatever.

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No. QU

QUASAR ASSOCIATES, INC.

COMMON STOCK

This Certificate is transferable in Jersey City, New Jersey or New York, New York

For _____ Shares

_____

Dated _____ 19__

_____

Countersigned and Registered:
[illegible] Trust Company
Transfer Agent
and Registrar
By _____
Authorized Officer

Form [illegible]

QUASAR ASSOCIATES, INC.

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

THIS IS TO CERTIFY THAT

_____ SHARES

Exhibit A-44-1

No. QU

_____ Shares

_____

Dated _____ 19__

_____

Transferable Only on the Books of the Corporation by the Holder Hereof in Person or by Attorney Duly Authorized

Is the owner of

fully paid and non-assessable shares of Common Stock of the par value of $.10 each of QUASAR ASSOCIATES, INC. (hereinafter called the Corporation) transferable only on the books of the Corporation in person or by attorney duly authorized in writing upon surrender of this Certificate properly endorsed, subject to the above-mentioned provisions restricting the right to transfer the shares evidenced hereby. The holder hereof accepting this certificate expressly assents to and is bound by the Certificate of Incorporation, as amended, and the By-Laws, as amended, of the Corporation, copies of which are available for inspection at the office of the Corporation.

WITNESS the seal of the Corporation and the signatures of its duly authorized officers.

Dated _____

_____
Chairman of the Board
President
Vice President

_____
Secretary
Treasurer

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GOVERNMENT EXHIBIT 5

GEORGE A. BAILEY & CO.

Investment Securities
1304 Philadelphia National Bank Building
Philadelphia, Pa. 19107

Members
Philadelphia—Baltimore—Washington
Stock Exchange

January 31, 1973

Securities and Exchange Commission
Division of Investment Company Regulation
500 North Capitol Street
Washington, D.C. 20549

Gentlemen:

This firm acts as investment adviser and underwriter for Sovereign Investors, a registered investment company.

We have been asked by one of the broker-dealers who has a selling agreement with us if they can net purchase orders and orders for liquidation of the Fund's shares, received by them on the same day.

If, for example, the dealer had an order for the purchase of 100 shares and another order for the liquidation of 50 shares, could he buy 50 shares from the Fund's underwriter and use the 50 shares being liquidated to complete the 100 share purchase order.

The NASD advises us that their rules do not prohibit this practice. They suggest that there may be SEC rules which may have a bearing on this matter.

A copy of our selling agreement is enclosed. We would appreciate your opinion of the SEC's position.

Yours very truly,
/s/ George A. Bailey, Jr.
GEORGE A. BAILEY, JR.

GABJr/jlm
enclosure

In Investment Company Act Release No. 87 (March 14, 1941), the Commission's General Counsel took the position that a broker-dealer acting solely in the capacity as agent for a purchasing or selling investor is not a "dealer" for purposes of Section 22(d), and thus could execute a transaction, assuming full disclosure of his agency capacity, at a price other than the current public offering price described in the prospectus. The Commission later confirmed that position on the meaning of "dealer" for purposes of Section 22(d) in In the Matter of Oxford Company, Inc., 21 SEC 681 (Jan. 3, 1946). See, also, *In the Matter of a Proposed Amendment to the Rules of Fair Practice of the NASD, Inc.*, 9 SEC 38, at 44, 45, Investment Company Act Release No. 118 (April 19, 1941). Accordingly, the Act does not prohibit a broker-dealer from acting as an agent with respect to a client. It is not clear to me whether or not paragraph 3 of your Dealer Agreement prohibits such broker activity, but I assume that, if it does, you would waive the prohibition.

As you may know, the Department of Justice recently sued the NASD and certain mutual fund underwriters and large NYSE broker-dealers alleging, inter alia, that provisions in their dealer agreement containing restrictions on a dealer's ability to act as an agent for a client were unlawful under the anti-trust laws. Moreover, the Commission recently concluded Hearings on Mutual Fund Distribution Systems, for the purpose of considering changes in Section 22(d)'s resale price maintenance provisions. Questions similar to yours were considered at those hearings.

In summary, no provisions of the Act or rules thereunder would prohibit the practice you describe. You have not stated what sales or other charge you would impose on the purchaser in a broker transaction. Generally, under the Securities Exchange Act of 1934, you could not charge more than a reasonable brokerage fee.

/s/ Alan Rosenblat
ALAN ROSENBLAT
Chief Counsel
Division of Investment Management
Regulation
MEL

April 24, 1973

AREA CODE 215
LOCUST 3-9242 *General Distributors*

GEORGE A. BAILEY & CO.
845 Land Title Bldg.
Philadelphia, Pa. 19110

SELLING GROUP AGREEMENT—
SOVEREIGN INVESTORS, INC.

Gentlemen:

As general distributor and agent for Sovereign Investors, Inc. (hereinafter referred to as the "Company") we invite you to become a member of the Selling Group to distribute the shares of the Company on the following terms:

1. Orders for shares received from you and accepted by us will be at the public offering price applicable to each order as established by the then effective Prospectus of the Company. All orders are subject to acceptance by us and we reserve the right in our sole discretion to reject any order.

2. Until further notice, sales compensation will be allowed as follows:

INDIVIDUAL SALES	
Up to $10,000	7%*
$10,000 but less than $25,000	6½%*
$25,000 but less than $50,000	4¾%
$50,000 but less than $100,000	3¼%
$100,000 but less than $250,000	2.4%
$250,000 but less than $500,000	2%
$500,000 and up	1.6%

* Except for Plan sales where dealer discount is 6%.

3. As a member of the Selling Group, you agree to purchase shares only through us as principal for your own account or as agent for your customer or from your customers. Purchases through us shall be made only for the purpose of covering purchase orders already received from your customers or for your own bonafide investment. Purchasers from your customers shall be at a price not less

than the bid price quoted by us as agent for the Company at the time of such purchase. Nothing herein contained shall prevent you from selling any shares for the account of the record holder to us or to the Company at the bid price quoted by us, and charging your customer a fair commission for handling the transaction.

4. Each of your orders to us shall specify the size of each order received by you, which your order to us is intended to fill. You will maintain the current public offering price on all your resales of shares bought hereunder.

5. When acting as principal, you agree to resell the shares only to investors. You also agree not to buy shares on your own account for resale to the Company, and not to withhold placing orders from day to day in order to profit yourselves thereby. We will accept conditional orders only on the basis of a specified definite price.

6. It is further agreed that you are to act solely as purchaser through us or as agent for your customer and are not hereby employed by us or by the Company, as broker, agent or employee.

7. Payments for shares are to be made pursuant to our confirmation of your orders. Delivery instructions shall be given with or prior to payment, in the absence of which, upon receipt of payment, certificates will be issued and delivered to you at your address given below.

8. On all transactions by you involving any of the shares which are the subject of this agreement whether you are acting as principal or agent for your customer, you have and will take full responsibility for compliance by you with all applicable state and federal laws and regulations and for all communications made by you to any purchaser, and you will hold us and the company harmless from any and all claims with respect thereto and from the expense of contesting any such claims.

9. No person is authorized to make any representations concerning the Company or its shares except those contained in the effective Prospectus and any such information as may be officially designated as information supplemental to the prospectus. In purchasing shares through us you shall rely solely on the representations contained in the effective prospectus and supplemental information above mentioned.

10. Additional copies of any prospectus and any printed

information designated as supplemental to such prospectus will be supplied by us to members of the Selling Group in reasonable quantities upon request.

11. Each of us represents and agrees that each of us is (and will continue to be during the life of this agreement) a member of the National Association of Security Dealers, Inc., and we both hereby agree to abide by the Rules of Fair Practice of that Association. This agreement shall be construed to include among its terms each of the provisions required by Rule 26 of the said Rules of Fair Practice, to be set forth in a sales agreement, and each of us agrees to be bound by such provisions. If you are not eligible to be a member of the said Association because you do not maintain an office in the United States of America, you agree nonetheless to abide by the Rules of Fair Practice of the Association, particularly Rule 26, insofar as they may relate to transactions involving the shares which are the subject of this Selling Group Agreement.

12. Either party hereto may cancel this agreement by notice delivered or telegraphed to the other party, pending which this agreement shall remain in full force.

13. Any notice to you shall be duly given if mailed or telegraphed to you at your address as registered from time to time with the National Association of Security Dealers, Inc.

GEORGE A. BAILEY & CO.

By .....

ACCEPTED:

Firm Name: .....

By: .....

(Authorized Signature)

Address: .....

.....

Date: .....

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

June 1, 1973

Daniel R. Hunter, Esq.
Antitrust Division
Department of Justice
Washington, D.C. 20530

Re: *United States* v. *NASD, et al.*,
Civil No. 338-73 (D.D.C.)

Your reference no.: TEK-BG-DRH
60-268-13

Dear Mr. Hunter:

In response to your request by letter of May 4, 1973, the Commission on June 1, 1973 authorized us to send the attached copy of what appears to be the relevant portions of a memorandum of a conference held on March 11, 1959 between the Commission staff and members of the NASD staff.

Sincerely yours,
/s/ Martin Moskowitz
MARTIN MOSKOWITZ
Assistant Director

Enclosure

GOVERNMENT EXHIBIT 6

MEMORANDUM OF CONFERENCE

BETWEEN: Wallace H. Fulton, Marc White,
Donald H. Burns and Roy Moulden
National Association of Securities Dealers, Inc.

and

Philip A. Loomis, Jr.
Robert Block and Joseph A. Keenan, Jr.
Division of Trading and Exchanges

DATE: March 11, 1959.

The meeting was held for the purpose of advising the Division of certain actions proposed to be taken by the Association concerning Association rules. . . .

. . . The last point raised concerned a proposed interpretation of Section 1 of Article III of the Rules of Fair Practice the effect of which would be to prevent a selling group dealer taking down investment trust shares from an underwriter pursuant to a selling group agreement from selling such shares to another dealer who was not party to a selling group agreement. The Investment Companies Committee proposed to prevent such transactions as being inconsistent with an orderly distribution system and conducive to the development of an over-the-counter market independent of the underwriter.

The staff objected to the proposed step on several grounds. It was pointed out to NASD representatives that the statute did not prevent such transactions, that selling group agreements could and often did bar such transactions, that it was hardly the function of the NASD to enforce selling group contract provisions (the PSI case was referred to). In the course of the discussion it became clear that the sponsor of the interpretation was the Investment Companies Committee and that most of the NASD representatives present were not in favor of the proposal. The proposal can be considered abandoned.

CC: Philip A. Loomis
Ralph S. Saul
Robert Block
Walter G. Holden
Joseph A. Keenan

Block, JAKeenan, Jr./jt

voting stock and 30% of its outstanding non-voting stock. Because of their respective ownership of more than 25% of the voting stock of FMR, Messrs. Johnson 2d and Johnson 3d are each presumed to control FMR. Caleb Loring, Jr. owns 12.8% of the outstanding voting stock. No other person presently owns as much as 10% of either the voting or non-voting stock of FMR. The directors of FMR are Messrs. Johnson 2d, Johnson 3d, Loring and Byrnes.

Investment Restrictions

By the terms of its charter, the Fund is authorized to engage in the business of investing its assets in all forms of stocks, bonds and other securities and to change its investments from time to time.

It is the fundamental policy of the Fund not to:

(1) Purchase the securities of any issuer if such purchase, at the time thereof, would cause more than 5% of the value of its total assets at market value to be invested in the securities of such issuer (other than obligations of the United States Government and its instrumentalities);

(2) Purchase the securities of any issuer if such purchase, at the time thereof, would cause more than 10% of any class of securities, or of the outstanding voting securities of such issuer to be held in the Fund's portfolio;

(3) Purchase securities of other investment companies except in the open market where no commission other than the ordinary broker's commission is paid, or as part of a merger, and in no event may investments in such securities exceed 10% of the value of the total assets of the Fund. The Fund may not purchase or retain securities issued by another open-end investment company under any circumstances;

(4) It may not have more than 25% of the value of its assets invested in common stocks of companies in any one industry;

(5) Invest in the securities of companies which, including predecessors, have a record of less than three years' continuous operation, although it may invest in the securities of regulated public utilities or pipe-line companies which do not have such a record;

(6) Buy any securities or other property on margin, engage in short sales, or purchase or sell puts or calls, or combinations thereof;

(7) Invest in companies for the purpose of exercising control or management;

(8) Buy or sell real estate, commodities or commodity contracts unless acquired as a result of ownership of securities;

(9) Underwrite securities issued by others;

(10) Make loans to other persons (except by purchase of bonds and other obligations constituting part of an issue);

(11) Borrow money except as a temporary measure for extraordinary or emergency purposes, and such amounts as it does so borrow may not exceed 10% of the value of its gross assets taken at cost;

(12) Purchase or retain securities issued by an issuer if the officers and Directors of the Fund and of the Adviser, together, own beneficially more than 5% of any class of securities of such issuer.

None of the above restrictions may be changed without the vote of a majority of the outstanding shares.

Capital Stock and Non-Cumulative Voting

The Fund has only one class of securities—shares of capital stock of $1 par value—of which 75,000,000 are authorized. These shares have non-cumulative voting rights, which means that the holders of more than 50% of the shares voting for the election of directors can elect 100% of the directors if they choose to do so, and, in such event, the holders of the remaining less than 50% of the shares voting for the election of directors will not be able to elect any person or persons to the board of directors.

Fractional shares may be issued and when issued have the same rights proportionately as full shares. Currently, such fractional shares are issued only in connection with the Voluntary Accumulation and Systematic Withdrawal Plans as described on page 8. Each full share has one vote, and when issued is fully-paid and non-assessable. The shares are transferable by endorsement or stock power in the customary manner, but the Fund is not bound to recognize any transfer until it is recorded on the books of the Fund. Each share is entitled to share equally in any dividends or distributions declared by the Board of Directors. In the event of liquidation of the Fund, the holders of shares are entitled to all assets remaining for distribution after satisfaction of all outstanding liabilities and are entitled to share therein in proportion to the number of shares held. No shares carry any conversion, subscription or other pre-emptive rights except the right to require redemption thereof by the Fund and the privilege of exchanging shares for shares of certain of the other Funds in the Fidelity Group of Funds, as described on pages 9-10.

Sale of Shares

Investors may buy shares at the public offering price equal to the net asset value per share [illegible] a sales charge, which is a perc[illegible]

7

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History and Capitalization

The Fund is a Massachusetts corporation carrying on the business of an earlier Delaware corporation formed in 1932. Shareholders are entitled to dividends when and as declared by the Board of Directors and to participate equally in any liquidation or distribution of the Fund. Shares when issued will be fully paid and non-assessable and fully transferable. Shares have no pre-emptive, subscription or conversion rights. The authorized capital stock of the Fund consists of $1 par value shares of one class having equal voting rights having one vote per share. These shares have non-cumulative voting rights which means that the holders of more than 50% of the shares voting for the election of Directors can elect 100% of the Directors if they choose to do so, and, in such event, the holders of the remaining less than 50% of the shares voting for the election of Directors will not be able to elect any person or persons to the Board of Directors.

Investment Objective and Policy

The objective of Massachusetts Investors Growth Stock Fund is to provide long-term growth of principal and future income rather than current income return. To achieve this objective it is the policy of the Fund to keep its assets invested, except for working cash balances, in the common stocks, or securities convertible into common stocks, of companies believed by the management to possess better than average prospects for long-term growth, and this policy may not be changed without a vote of shareholders. Emphasis is placed on the selection of progressive, well-managed companies.

Since the shares of the Fund represent an investment in common stocks, shareholders should understand that the price of the Fund's shares will go up or down with changes in the market value of the stocks held by the Fund. Moreover any dividends paid by the Fund will increase or decrease in relation to the amount of dividends received from these investments. There is no guarantee that the objective of the Fund will be realized and its name does not imply an assurance that an investor's capital will increase.

Investment Powers and Restrictions

The Fund may not purchase the securities of any issuer if such purchase would cause more than 5% of its total assets taken at market value to be invested in securities of such issuer, other than United States Government obligations. The Fund may not purchase the securities of any issuer if such purchase would cause more than 10% of any class of securities of such issuer to be held in the portfolio and may not invest more than 5% of its assets in the securities of companies which, including predecessors, have not been in continuous operation for at least three years. The Fund may not purchase securities issued by investment companies except in the open market or in connection with a plan of consolidation or merger, may it purchase or retain securities of a company if one or of the Fund's management owns ½% each and such persons own collectively more than 5% of the company's shares. The above restrictions may not be changed without a vote of the shareholders.

The Fund purchases securities primarily for investment, rather than with a view to trading profits. While the rate of portfolio turnover is not a limiting factor when management deems changes appropriate, it is expected that the Fund's annual portfolio turnover rate generally will not exceed 50% in a particular year. The Fund's portfolio turnover rates for the past three years are set forth on page 7. The Fund owns foreign securities and may from time to time purchase such securities even though an interest equalization tax, presently a maximum of 18½%, may be incurred. Such tax would increase the cost of such securities and correspondingly reduce the return on them.

It is not the policy to invest for the purposes of exercising control or management. It is not the policy to engage in underwriting securities (except insofar as the Fund may technically be deemed an underwriter in selling a portfolio security under circumstances which may require registration of the same under the Securities Act of 1933), to concentrate more than 25% of the assets (at market value at the time of each investment) in any one industry, to purchase or sell real estate, commodities or commodity contracts. No margin transactions or short sales are permitted. The Fund may borrow money up to 10%, and may pledge up to 15%, of its gross assets at cost subject to a 300% asset coverage requirement (but only temporarily for extraordinary or emergency purposes). The Fund may make call or six-month secured loans through brokers or banks. The restrictions in this paragraph may not be changed without a vote of shareholders.

Services for Shareholders-Lifetime Investing Account

Every shareholder has a Lifetime Investing Account whereby he will receive after each share transaction a statement showing the cumulative activity in his account since the beginning of the year. At the end of each year he will receive a complete annual statement of share transactions as well as income tax information regarding dividends and capital gain distributions. Share certificates will not be issued unless requested. (Certificates for fractional shares are not issued in any case.)

THE PRICE TO THE PUBLIC FOR SHARES OFFERED BY THIS PROSPECTUS VARIES WITH THE FLUCTUATIONS IN THE MARKET VALUE OF SECURITIES OWNED BY THE FUND. IT IS COMPUTED AT LEAST ONCE DAILY AS OF THE CLOSE OF THE NEW YORK STOCK EXCHANGE, ON EACH DAY THE EXCHANGE IS OPEN FOR TRADING AND IS THE NET ASSET VALUE PLUS A SALES CHARGE EQUAL TO 8.5% (MAXIMUM) OF THE OFFERING PRICE, SCALED DOWN TO 1¼% (MINIMUM) DEPE... PURCHASE AS MORE FULLY DESCRIBED ON PAGE 3.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND ... SION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF ... ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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to its stockholders. Such qualification would not, of course, involve governmental supervision of management or investment practices or policies.

Under the Internal Revenue Code, a regulated investment company is relieved of Federal income tax on its net ordinary income to the extent such income is distributed to its stockholders. Such net ordinary income distributions are taxable to the recipient stockholders as ordinary income and are eligible, in the case of individual stockholders, for the $100 dividends exclusion and, in the case of corporate stockholders, for the 85% dividends received deduction, subject to proportionate reduction of the amount eligible for exclusion or deduction if the aggregate dividends received by the Company from domestic corporations in any year are less than 75% of its gross income exclusive of capital gains. The excess of net long-term capital gains over net short-term capital losses realized and distributed by the Company to its stockholders as capital gains distributions will not be taxable to the Company but will be taxable to the stockholders as long-term capital gains, irrespective of the length of time a stockholder may have held his stock. Capital gains distributions are not eligible for the exclusion or the deduction referred to above. Distributions of gains realized on the sale of securities will be taxable to stockholders as stated above, even in those situations where the distribution will reduce the net asset value of the stockholder's interest to below the amount paid for his stock. Any dividend or distribution received by a stockholder on shares of the Company shortly after the purchase of such shares by him will have the effect of reducing the net asset value of such shares by the amount of such dividend or distribution. Furthermore, such dividend or distribution, although in effect a return of capital, is subject to applicable taxes to the extent that the investor is subject to such taxes. Stockholders will be advised annually as to the tax status of dividends and capital gains distributions.

On September 30, 1972 the Company's net assets included net unrealized appreciation of securities of $829,555, equivalent to $3.83 per share and 19.9% of net asset value.

For Federal income tax purposes, when put and call options which the Company has written separately expire unexercised, the premiums received by the Company become ordinary income at the time of expiration. Puts and calls written as straddles give rise to short-term capital gains at the time they expire unexercised. When a call is exercised, the selling price of the stock is increased by the amount of the premium, and the gain or loss on the sale of stock becomes long-term or short-term, depending on the holding period of the stock. When a put is exercised, the Company reduces the cost price of the stock by the amount of premium received.

DESCRIPTION OF COMMON STOCK

The authorized capital stock of the Company consists solely of 10,000,000 shares of Common Stock having a par value of $.002 per share. Each of the Company's shares has equal dividend, distribution, liquidation and voting rights. There are no conversion or pre-emptive rights in connection with any shares of the Company. All shares of the Company when issued will be fully paid and non-assessable. The rights of the holders of shares of Common Stock may not be modified except by vote of the holders of a majority of the outstanding shares.

A 50 for 1 split of the shares of the Company's Common Stock, a related increase of the Company's authorized capital stock from 200,000 to 10,000,000 shares of Common Stock, and a related decrease of the par value of such shares from $.10 to $.002 became effective February 3, 1971, having been approved by the Board of Directors and by the stockholders of the Company at the annual meeting on February 4, 1971.

To assure that any proposed transferee is aware of the investment objective and policies of the Company, shares are transferable only with the consent of the Board of Directors.

The Certificate of Incorporation of the Company gives the Company the right to purchase for cash (i) the shares of the Common Stock evidenced by any stock certificate presented for transfer and

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PAINE, WEBBER, JACKSON & CURTIS

NEW YORK OFFICE MEMORANDUM #38

TO: ALL PARTNERS, REGIONAL PARTNERS, BRANCH OFFICE MANAGERS AND STOCKBROKERS

FROM: A. L. MEENTEMEYER
GEORGE WASHBURN

SUBJECT: MUTUAL FUND SELLING PRACTICES

The policy of the firm relating to the handling of mutual fund orders for customers has always been aimed at protecting the interests of the customer. For many years the written policy sought to discourage clients from switching funds and liquidating funds to make money available for other investments.

As a result of recent developments, it has become necessary to review our policy and to take the following additional steps to strengthen and augment it:

1. Each office must keep a separate record by customer and family group for all mutual fund transactions. This record must include the customer's name and account number, account of related persons, the stockbroker's name, customer's approximate age and details of each transaction. The form below should be adopted for this purpose. A supply of this form will be sent to each office.

MUTUAL FUND TRADE CONTROL RECORD

Account No. _____

Customer Name _____

Broker _____

Name of Related Accounts _____

Customer's Approximate Age _____

Trade Date	Bot Sold	No. Shares	Fund Name	Price Per Share	Gross Money	Remarks**

*If liquidation, report must be sent to New York; if switch, has switch letter been received from customer and sent to New York.

**Under remarks, indicate signed letter of intention (date and amount), right of accumulation, discounts, etc.

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5.03.4 Letters of Intention

On all mutual funds purchases, stockbrokers are required to explain carefully to the customer the various discount privileges available through a letter of intention or otherwise, and to record on the customer's mutual fund record a notation that such has been done. When mailing the prospectus and confirmation of each mutual fund purchase, a brief explanation of the normal discount privileges offered by most funds must be included.

5.03.5 Additional Sales Charges on Multiple Fund Purchases

Stockbrokers are required to explain to customers the additional sales charges involved in the purchase of funds of different sponsors over the purchase of a single fund or the "sister" funds of the same sponsor. The branch manager is responsible for reviewing and approving each multiple fund situation. He should initial a record as evidence of such review.

5.03. Absence of Selling Agreement

Retail orders for fund shares with whose management the firm does not have selling agreements may be filled if the shares can be purchased in the open market from an NASD member. The retail price charged must be equal to that charged by the sponsor.

GOVERNMENT EXHIBIT 11

MUTUAL FUNDS MANUAL

The contents of this Manual are confidential and are not to be distributed or released to anyone outside of Merrill Lynch, Pierce, Fenner and Smith Inc.

Operations Division
Merrill Lynch, Pierce, Fenner and Smith Inc.
June 30, 1970

1

GLOSSARY ON MUTUAL FUNDS

1. An *Accumulation Plan* is a plan by which an investor may make a regular purchase in a mutual fund in any share or dollar amount as long as the amount exceeds the minimum requirement outlined in the mutual fund prospectus. Income resulting from a customer's holdings in a mutual fund is called dividend and capital gains distribution and such distributions are usually reinvested automatically.
2. Any mutual fund with which Merrill Lynch has an agreement contract and for whom Merrill Lynch acts as dealer is called an *Agreement Fund.*
3. *Representative List* mutual funds are those which Merrill Lynch recommends for purchase at a given time.
4. A *Closed End Fund* is a mutual fund which has a specified number of shares authorized for sale to stockholders. Additional shares cannot be issued without the approval of the stockholders.
5. An *Open End Mutual Fund* is one that continuously issues new shares for public sale and agrees to redeem its shares at asset value on any day the New York Stock Exchange is open.
6. A *Custodian Bank* holds securities and cash owned by a mutual fund and frequently acts as the mutual fund's transfer agent.
7. The *Grey Market* is a term describing unlisted mutual funds with which Merrill Lynch does *not* have an agreement. For Grey Market funds Merrill Lynch makes no transactions directly with the fund but through a

dealer without a selling group willing to inventory fund shares from both buyers and sellers.
8. Mutual Fund shares are considered *Issued* when they are registered in the client's name and physically shipped to the customer. (A "DLD" entry appears on the customer's statement at the time the securities are shipped to the customer).
9. A *Letter of Intent* (LOI) is a written agreement by which a client *agrees to purchase* a specified dollar amount of a mutual fund within a 13 month period in order to receive a reduced commission rate for the total purchases made in the period. The total amount to be invested must equal the commission breakpoints indicated in the mutual fund prospectus. When shares for an LOI are issued to the customer, a percentage of the shares are held in escrow by the custodian bank until the LOI is completed. If the LOI is not completed in the 13 month period, the escrow shares necessary to meet the full commission charge on the purchases are liquidated. An LOI *may be back dated* to include purchases made in the last 90 days. (The LOI *expires* 13 months from the date to which it is back dated). A custodian bank statement is not printed for a new account buying under an LOI until the LOI form itself is physically received and processed by the fund.

11

iii. Places all mutual funds securities and their Code 80 in a special mutual fund envelope provided to all offices and mails to:

MERRILL LYNCH, PIERCE, FENNER
& SMITH INC.
Mutual Funds Department
Post Office Box 678—Wall Street Station
New York, New York 10005

NOTE: Do not mail the Code 80 security report and securities to the Registered Mail Section in New York.

(c) Staples the office copy of the order to the local billing. *Checks office 1028 to see that transactions have been properly processed.*

III. *PURCHASE ORDERS AND SALES: "GREY MARKET" MUTUAL FUNDS*

Where there is *no* Grey Market for the fund shares and the Grey Market shares are long in the customer's account, the shares may be redeemed through a regular securities order request for redemption, directed to the Mutual Funds Department QP RDP as they may be issued to the customer so that he may send them directly to the Mutual Fund for redemption. It is important to know that a confirmation that the order was received by Exchange *does not* constitute an execution price as of that day. The price is established by the fund on the day the shares are physically delivered to the fund.

Purchase and Sale orders on funds for which Merrill Lynch *does not have signed agreements* are executed in the so called "grey market." BEFORE ACCEPTING AN ORDER FROM A CUSTOMER THE A/E MUST WIRE QP.GVS, GIVING SIZE OF ORDER TO DETERMINE AVAILABILITY OF A GREY MARKET. AVAILABILITY OF GREY MARKETS MAY VARY FROM DAY TO DAY. "Grey Market" mutual funds orders will be entered via the Merrill Lynch Mutual Funds Order Form Code 282. The procedures for handling and processing purchase and sale orders of "grey market" mutual funds are the same as those outlined above for the "agreement" funds (Section I and II above) except that there are no plan arrangements (ie., L.O.I. SWP, etc) or automatic re-investment of dividends and capital gains payments.

On "grey market" sales the offices must have possession of the certificate(s) at the time the sale order is entered and the certificate numbers must be included on the order—unless the customer's Merrill Lynch account is long the security being sold. The A/E must determine availability of grey market by wiring QP.GVS.

Offices should not enter sell orders for "grey market" funds if Merrill Lynch does not have possession of the certificates. All mutual fund certificates received in the office will be posted to the special Security Report Code 80 for Mutual Funds (and included in the special Mutual Funds Department envelope when shipped to New York).

IV. *UNLISTED MUTUAL FUNDS TRANSFER PROCEDURES*

Generally, transfers of unlisted Mutual Funds require special instructions and handling. The procedures vary for 'agreement' and 'grey market' funds, and for 'issued' or 'unissued' securities. On purchases of any unlisted mutual fund, the initial purchase order will include the necessary transfer instructions or instructions on securities to be held by the custodian.

For all purchases, the Mutual Funds Department prepares the necessary transfer instructions. Office prepares required transfer instructions on all other *non-order transfers,* as indicated below.

A. *Transfers to be made with purchase of "agreement" Mutual Fund*

The offices will wire with purchase orders the necessary information to effect registration (transfer) and delivery to customers, or to have Fund's Custodian hold such securities for customer in 'unissued' account. If the necessary information does not accompany each purchase order, the office will be challenged and the *execution of the purchase may be delayed.*

B. *Transfers to be made with purchase of "No Load" and Non-Agreement Mutual Fund (Grey Market)*

Purchases of Funds with which Merrill Lynch *does not have a signed agreement* (grey market) must have the securities transferred and shipped to the customer. Merrill Lynch can not hold such securities in the customer's account. Since Merrill Lynch does not have any agreement with these funds, arrangements cannot be made to have the fund's custodian hold the security for the customers. Offices must wire with the purchase order the necessary registration and delivery instructions as provided on the Mutual Funds Order Form. If the necessary transfer information does not accompany the purchase order, the office will be challenged and the execution may be delayed.

C. *Transfers of "agreement" Mutual Funds where the customer or Merrill Lynch has possession of securities*

If a customer or Merrill Lynch holds securities for a mutual fund with which Merrill Lynch has an agreement, transfers of such securities to a specific name and address can be made provided the customer furnishes:

(a) Name, address and social security number of registrant.
(b) Name and address to which securities are to be mailed if different than registrant's.

The office will prepare a Mutual Fund Transfer Instruction Code 283 for the transfer. The Code 283 Instructions will be sent (with certificates if customer delivers certificates to the office) to the Mutual Funds Department in the Special Mutual Funds envelope.

cc WFS, EFH, HF, JR., TAB, KV, DS, HF, JR., C. MacK, J. McG, HH, RC, (and all girls who handle teletype) EP, DTS, Jr., AF, HIS, NYC, MLB, RP, RJA, CHIC., JAC, Jr., JAC, 3rd, TW, LA.

MEMORANDUM

FROM: Henry T. Vance

TO: All Partners
Wholesale Men
Branch Offices

October 4th, 1950.

This memorandum is being written merely to confirm the understanding we reached at the meeting of our partners and wholesale representatives here last week, to the effect that we will, in the future, admit to membership in our various Selling Groups, upon request, any dealer firm which is a member of The New York Stock Exchange. As you know, this decision to qualify automatically a dealer for membership in our Selling Group, who has met the standards of The New York Stock Exchange, is somewhat of a departure from past practice insofar as our organization is concerned, and, accordingly, I thought it might be well for me to review here several of the factors which led us unanimously to agree to take such action.

The investment company business has grown substantially in recent years, not only in total dollar volume, but in general public recognition and acceptance. It now seems to be fairly generally agreed among government officials, economists, financial writers, and executives of important financial institutions, that the open-end or mutual investment company can occupy an important place, on an institutional basis, in solving the investment problems of most investors along with government bonds, savings banks, life insurance, home mortgage institutions, etc. As the basis of service of the mutual investment companies has broadened, it has seemed to us essential that we maintain as many outlets for the sale of our funds as is consistent with prudent business policy, in order to keep open the channels through which investors' funds may flow into the shares of our companies.

That these channels have increased in recent years is, of course, a fact of which you are all intimately aware, but

to illustrate the point, I might add that when I came to Boston in 1936, we had less than 300 dealers in our Selling Group, whereas today the number of dealers is approximately 1,050. If we add branch offices—which we properly should do—our total number of outlets today exceeds 3,500.

In every instance of which I am aware, the increase in our Selling Group membership in each community has added materially to the volume of other local dealers—in other words, the increase in the number of dealers enthusiastically discussing the merits of our investment companies has been advantageous to all dealers in the Group. We have, of course, made every effort to limit the extension of Selling Group membership to only those dealers who have had a good local reputation in the investment business. It has seemed to us, however, that any firm which has met the requirements of The New York Stock Exchange for membership should without question measure up to the standards of our own requirements for membership in our Selling Group, and accordingly, we have agreed that we will be willing from this point on to accept any New York Stock Exchange member into our Group without further check by you either with local dealers or with the home office.

Memorandum

From: Henry Vance

To: All Partners
Wholesale Men
Branch offices

October 4, 1950.

There are other questions to be taken into consideration in connection with the expansion of our Selling Group. One is that it is quite important to the investment company industry as a whole to maintain amicable and close-working arrangements with the New York Stock Exchange and its members. We can all recall that during the early stages of our development, many of the New York Stock Exchange houses looked upon the investment company as a possible threat to their business. This was a natural reaction, but one which could have been very damaging if it had not been arrested in time. The experience of Stock Exchange houses who were active in the sale of investment company shares, of course, helped provide part of the answer. Just as importantly it should be noted that the Exchange itself studied many of the seeming controversial aspects of our development, jointly with a Committee of the National Association of Investment Companies. As a result, I believe that we have an opportunity to work hand in hand with the Exchange, and it is well to recognize that the Exchange, which could have been a very troublesome opponent, now can well be of great help as the years go on.

There are other factors which tend towards making it important for us to consider the enlarging of our Selling Group. Some of you will recall the effort that has been made on the part of a National Association of Investment Companies' Committee to persuade the Securities and Exchange Commission to require the delivery of prospectuses in connection with all transactions at retail whether made by a dealer who is a member of a selling group or one who is buying stock in the street. This has raised questions on the part of the Securities and Exchange Commission Commissioners as to underwriters' policy with respect to including dealer firms in their selling groups. This situation has not as yet come to a head, but I am convinced that if we are to achieve our objectives we must show a reasonable willingness to open our Group to additional responsible dealers.

We are all apt to forget too the vital importance which price maintenance—guaranteed to us by Section 22D of the Investment Company Act—has played in our sales growth during the last ten years. This is a provision which can be of importance to a business operating with redeemable shares. Once a dealer is admitted to a Selling Group, he puts through his order as a principal at the official offering price. On the other hand, when a responsible dealer is prevented from joining our Group, he naturally will endeavor to find a way of doing business as a broker on an agency basis at a price below the official offering price, thus competing on a basis which is to the disadvantage of our regular dealers. It is important—it seems to us—to eliminate as much of this kind of business as we can, and to knit together all of the responsible investment dealers in this country in a co-ordinated sales campaign which will cut down competitive street markets and will lessen any pressure for a change in Section 22D of the Act.

I could add additional reasons for the decision which was arrived at last week, but I am sure that these will be sufficient to convince any thinking dealer that our policy with respect to including any members of the New York Stock Exchange in our Group is one which is constructive and necessary in the sound and proper development of the business of our dealers and ourselves.

Sincerely,
HTV

htv/nwh

THE CROSBY CORPORATION
Office Memo

To Harold A. Hobson, Jr. Date October 30, 1970
From Alan C. F. Leggett Re:

On July 24, 1970 you wrote a memo to Bill Kallenberg indicating that some dealers when taking in liquidations will not redeem through Crosby, but rather will hold in their house account and reregister to a purchaser. A week's sampling of transfers at the State Street Bank revealed only one item which would appear to fall into this category. However, a review of the transfers at the Shawmut Bank for the period 9/15-9/30 indicated that the bulk of the transfers at the Shawmut appear to be transactions of this nature. For purposes of this investigation, we assumed that any transfer from one registration to an apparently unrelated registration was not what we would consider to be a legitimate transfer. Therefore, it does appear that the condition which you have described does exist.

Our counsel agrees with me that the language of our sales agreement does not prohibit a dealer purchasing at net asset value from one investor and reselling to another investor at the public offering price. In summation, it was counsel's opinion that we should not revise the sales agreement to extend any restrictions on the dealer, since to do so would cause serious questions under the anti-trust laws.

The answer, then, to your original inquiry is that yes, the condition does exist, but that it is not in violation of our sales agreement. There is some loss of revenue to Crosby because of this condition, but we will have to live with it. In any case, thanks for bringing this to our attention.

ACFL/cmb

COLONIAL MANAGEMENT ASSOCIATES
75 FEDERAL STREET
BOSTON 10, MASSACHUSETTS

December 22, 1958

Mr. Robert L. Cody
Vice President and Secretary
North American Securities Company
615 Russ Building
San Francisco 4, California

re: *Purchase of Investment Company Shares from Underwriters by Selling Group Members and Subsequent Resale to Non-Selling Group Members*

Dear Bob:

Ray Moulden's memorandum of December 17 asks for the answers to certain specific questions relative to the above matter. My answers are as follows:

(a) No.

However much we would like 26(f)(2) to cover such a practice, all this section says is that NASD members may purchase from underwriters if they do so for the purpose of covering orders on hand or for investment. The fact that the orders come from other non-selling group dealers and they choose to sell to them at less than the public asking price is just not within the scope of 26(f)(2). This particular problem can be handled by appropriate language in the selling group agreements of the members.

(b) No.

See my answer to (a) above. The fact that there is or is not a discount would not seem to make any difference.

(c)(1) No.

All that 26(a) says is that securities can be sold at a discount by NASD members only to NASD members.

GOVERNMENT EXHIBIT 14

December 22, 1958

Mr. Robert L. Cody
Vice President and Secretary—2.

(c)(2) No.

However, I suppose that if the dealer violates an agreement which he has made with another member, he may be acting other than in accordance with the high standards of commercial honor which the Association was formed to promote and that this might furnish the basis for some kind of disciplinary proceeding against him, although query whether the Association should become involved in enforcing private agreements.

I recognize that the purchase of investment company shares with subsequent resale to other NASD members at less than the public offering price does encourage the street market and that unfavorably affects the distribution of investment company securities but it does not seem to me that these practices are within the scope of 26(f)(2) or 26(c).

I believe that most selling group agreements can be amended by the underwriter at will and I would suggest that a more practical way to deal with this situation is to suggest to underwriters that this area be covered by a properly drawn selling group agreement.

Sincerely,
(sgd.)
Franklin R. Johnson

Excerpts from minutes of
I. C. C. meeting
10/24/58

Purchase of Investment Company Shares from Underwriters by Selling Group Members and Subsequent Re-Sale to Non-Selling Group Members: The Committee considered whether the term "purchase orders," as set forth in the last line of Section 26(f)(2) of Article III of the Rules of Fair Practice, is limited to orders from members of the public. The question was posed as part of a general discussion of practices of some selling group members which, unbeknownst to the underwriters, take down shares at a discount and re-sell them to members who do not have a selling group agreement at a price sufficiently below the public offering price to permit both the selling group member and the non-selling group member to earn a profit on the transactions.

Consideration was also given to the significance of Section 26(f)(2) in the situation just described in the light of Section 26(c), which states in part that no member may purchase shares at a discount unless a sales agreement is in effect between the underwriter and the purchasing dealer. The Committee took the position that interpreting Section 26(f)(2) to permit the purchase of shares from an underwriter by a selling group member for re-sale to a member that does not have a selling group agreement with the underwriter (regardless of the question of discounts) is an encouragement of the street market that could unfavorably affect the orderly distribution system that Section 22(d) of the Investment Company Act and Section 26 of the NASD Rules are designed to promote.

When the discount element enters the picture, it was further argued, the encouragement of the street market is compounded, and then the non-selling group members are enabled to acquire shares at a discount and profitably re-sell them to other members or to the public. Further still, such transactions have the effect of making Section 26(c) meaningless. For the actual result is that the non-selling group member is enabled to acquire shares from the underwriter (through the selling group member) at a discount from the public offering price without a selling group agreement being in effect between them.

A further question in this area is whether the selling group member who takes down shares at a discount from the underwriter and re-sells at a discount to a non-selling group member is violating his selling group agreement. Most selling group agreements (but not all) state in effect that the contracting dealer may not buy shares from the underwriter at a discount except to fill orders from members of the public (i.e., not from other dealers). Whether the violation of a selling group agreement between NASD member underwriters and NASD member dealers that is entered into under the requirements of Section 26(c) for the purpose of promoting the orderly distribution of open-end investment company shares, as provided for in Section 22(d) of the Investment Company Act, is actionable under NASD rules as a violation of those rules is a question that can be answered only by the Association's Board of Governors with the advice of counsel, the Committee held.

However, whatever the Board might decide as to whether a violation of a selling group agreement involving investment company shares is actionable, the Committee suggested that a more basic approach to the overall problem of the street market might well be through Section 26(f)(2). In the opinion of the Committee, the meaning of the term "purchase orders," in the last line of Section 26(f)(2), should be interpreted as meaning orders from the public only. The Committee further felt that there should be a recommendation suggesting that the Board so interpret Section 26(f)(2) as an integral element in the promotion of the orderly distribution of investment company shares.

The effect of such an interpretation, obviously, would be to bar transactions between selling group members and non-selling group members in shares taken down from an investment company underwriter.

The Secretary was instructed to discuss the question of the meaning of the term "purchase orders," as set forth in the last line of Section 26(f)(2), with Henry Vance. Mr. Vance was a leading participant in writing Section 26(f)(2) so that it would satisfy Section 22(d) of the 1940 Act, as the means through which NASD would carry out the statute's directive for the maintainance of an orderly distribution system.

(Subsequently, in a discussion with Mr. Vance, the Secretary developed these points:

1. Section 26(f)(2) was aimed at two things: (a) to prevent dealers from taking down shares at a time of market rise and holding them for sale to customers at a profit and (b) to circumscribe the street market which was endangering the orderly distribution system.
2. Section 26(f)(2) has had the effect of discouraging the sale of shares between one dealer and another, and thus has helped circumscribe the street market.)

GOVERNMENT EXHIBIT 15

RE: *Purchase of investment company shares from underwriters by selling group members and subsequent resale to non-selling group members*

Section 26(c) of Article III of the Rules of Fair Practice reads, in part, as follows:

". . . . No member who is underwriter of the securities of an open-end investment company shall sell any such security to any dealer or broker at any price other than a public offering price unless (1) such dealer or broker is a member and (2) at the time of the sale a sales agreement is in effect between the parties."

Section 26(f)(2) reads as follows:

"No member shall purchase the securities of any open-end investment company of which it is the underwriter from such company except for the purpose of covering purchase orders already received and no member shall purchase such securities from the underwriter other than for investment except for the purpose of covering purchase orders already received."

The Investment Companies Committee has given much thought to the matter of transactions of the type noted above in relation to Section 26(f)(2) and Section 26(c) of Article III of the Rules of Fair Practice. Recognizing the fact that one of the principal purposes of Section 26 and of Section 22 of the Investment Company Act of 1940 was to encourage and maintain an orderly distribution system for the shares of open-end investment companies, the Committee is convinced that transactions in the shares of investment companies between selling group members and non-

selling group members is a deterrent to and unfavorably affects the orderly distribution system.

It seems reasonable to assume that Section 26(f)(2) was intended to mean that a dealer could purchase shares from an underwriter only for investment or to cover purchase orders already received *from members of the public,* as distinct from other dealers. Otherwise, there appears to be no reason for requiring a sales agreement in Section 26(c), because by simply inserting a selling group member between the underwriter and the non-selling group member all of the sales agreement requirements of Section 26(c), which are directed toward an orderly distribution of shares, could be avoided.

The Investment Companies Committee therefore recommends that the Board of Governors adopt the position that for the future Section 26(f)(2) be interpreted as though the words "from members of the public" were added to the end of the paragraph. This would have the effect of requiring dealers to take down shares from investment company underwriters (other than for investment) only to fill purchase orders already received from members of the public.

GOVERNMENT EXHIBIT 16

Excerpts from minutes of
I. C. C. meeting
2/27/59

2. *Interpretation of Section 26(f)(2):* The Chairman reviewed the discussion on this matter at the January Board meeting, noting that the Board had considered the memorandum to the Executive Director from the Secretary, indicating that (based on a questionnaire) the Committee favored an interpretation of Section 26(f)(2) as though the paragraph prohibited dealers taking down shares from underwriters except for investment or to fill orders from members of the public. Since that memorandum did not contain recommended language, the Board asked the Committee to reconsider the matter and if it was still of the same opinion, to adopt specific language which could be discussed with the SEC and submitted to the Board for adoption at the May meeting. During the discussion that followed, Mr. Cody made it clear that the Board of Governors does not want to be in a position of enforcing selling group agreements, and the Committee agreed that as a matter of policy it would encourage underwriters generally to amend their selling group agreements to limit sales to dealers for investment or to fill orders from members of the public. After some discussion, the Committee unanimously adopted the draft of a memorandum which had been prepared by the Secretary.

(The proposed interpretation was discussed with the Staff of the Trading and Exchanges Division of the SEC in March, together with the Board's interpretation barring special deals. The SEC officials could find nothing in the statutes or legislative history to support the proposed interpretation. Moreover, they held that its effect would be to require the NASD to enforce selling group agreements which, they emphasized, had been barred by the Commission decision in the Public Services of Indiana case some years ago, and that if the Board insisted on formally filing the proposed interpretation, the Division would be forced to oppose it at the Commission table. The Staff also said that it felt that investment company underwriters should amend their selling group agreements to cover the point involved, if they so desire, and enforce the contracts themselves. This adverse Commis-

sion position will, of course, be reported to the Board in May, and it seems virtually certain that the Board will not wish to pursue the matter further. The Staff did accept the Board's special deals interpretation, with certain language changes which were suggested for clarity and did not alter the substance. This latter version has been resubmitted to the Board for mail vote, and reapproved with certain perfecting amendments suggested by Mr. Cody. It has been sent to underwriters and will be sent to the membership shortly.)

GOVERNMENT EXHIBIT 17

Excerpts from text of report
of I. C. C. to Board
5/11-13/59

Interpretation of Section 26(f)(2)

At this meeting, the Committee reviewed the proposed interpretation of Section 26(f)(2) of the Rules of Fair Practice discussed at the January Board meeting, which interpretation would prohibit dealers from taking down investment company shares from underwriters except for investment or to fill orders from members of the public. As requested by the Board, the Committee considered specific language for discussion with the SEC by the Executive Director which, if not disapproved by the Commission Staff, would be presented to the Board for adoption at the May meeting. In discussing this matter, it was made clear to the Committee that the Board of Governors has no wish to be in the position of enforcing selling group agreements. The Committee, in turn, has agreed that as a matter of policy it will use its best efforts to encourage underwriters to amend their selling group agreements so that sales to dealers are limited to purchases for investment or to fill orders from members of the public, and to enforce these agreements by cancelling contracts with firms that may not live up to the undertakings of such agreements.

The Committee did adopt a memorandum recommending a Board interpretation in this area which, as the Executive Director has already advised you, was received adversely by the Trading and Exchanges Division of the Commission. In view of this development, the Committee does not feel it would serve a useful purpose to present the proposed interpretation to the Board of Governors. It will, however, continue to encourage other underwriters to amend and enforce their selling group agreements as outlined above. It is suggested that the Executive Director send a letter to underwriters and distributors of investment company shares suggesting that they make any necessary revision of their selling group agreements to make it clear that sales may be made only for the purpose of filling orders from members of the public or for investment and suggesting the importance of self-enforcement of selling group agreements

by the underwriters. Such a letter was drafted by the Investment Companies Committee, signed by the Executive Director, sent to all member underwriters and distributors of investment company shares, and is attached as an exhibit to this report.)

GOVERNMENT EXHIBIT 18

ALEXANDER YEARLEY, IV
Chairman
DONALD L. PATTERSON
Vice Chairman
ALLEN J. NIX
Vice Chairman
ERNEST W. BORKLAND, JR.
Treasurer
WALLACE H. FULTON
Executive Director

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1707 H STREET N. W. WASHINGTON 6, D. C.

TO UNDERWRITERS AND DISTRIBUTORS OF INVESTMENT COMPANY SHARES

The Board of Governors believes that the spirit, if not the intent, of Section 26(c) and Section 26(f)(2) of Article III of the Rules of Fair Practice is not being observed when dealers are permitted to take down shares from investment company underwriters with whom they have selling group agreements to fill orders—at a discount from the public offering price—from other dealers who are not parties to the same selling group agreement.

This practice permits dealers who are not parties to selling group agreements to obtain investment company shares indirectly and at a discount from the underwriters of such shares, thus bypassing the intent of Section 26(c).

This situation may be corrected by underwriters and distributors through amendments to selling group agreements to the effect that parties to the agreement may take down shares at a discount *only* to fill orders in hand *from members of the public* (or through agreements limiting such transactions to orders from "customers," as defined in Section 1(f) of Article II of the Rules of Fair Practice) * or for bona fide investment. Strict enforcement of the terms of selling group agreements, of course, will also serve to remedy this situation.

By order of the Board of Governors
/s/ Wallace H. Fulton
WALLACE H. FULTON
Executive Director

June 22, 1959

(* Section 1(f) of Article II of the Rules of Fair Practice reads as follows: "The term 'customer' shall not include a broker or dealer.")

Board of Governors

GLENN E. ANDERSON	Raleigh
ANDREW M. BAIRD	Chicago
CURTIS H. BINGHAM	Los Angeles
ERNEST W. BORKLAND, JR.	New York
FRANCIS M. BROOKE, JR.	Philadelphia
WILLIAM H. CLAPLIN, III	Boston
ROBERT L. CODY	San Francisco
JAMES G. DERN	Chicago
J. GORDON HILL	Detroit
JAMES F. JACQUES	Dallas
GRAHAM JONES	Hartford
RICHARD LAWSON	San Francisco
GLENN L. MILBURN	Wichita
ALLEN J. NIX	New York
BLANCKE NOYES	New York
GEORGE H. NUSLOCH	New Orleans
DONALD L. PATTERSON	Denver
RALPH C. SHEETS	New York
CLAUDE F. TUREEN	Cleveland
SAMUEL S. WHITTEMORE	Spokane
ALEXANDER YEARLEY, IV	Atlanta

GOVERNMENT EXHIBIT 19

Excerpts from minutes of
I. C. C. meeting
6/16/59

A. The Chairman's report on the last meeting of the Board of Governors

1. Investment Companies report to the meeting was generally to report the status of pending matters and did not include any recommendations to the Board involving crucial matters.

2. Mr. Cody mentioned that one ICC recommendation had been changed (at the February meeting the Committee adopted the policy that it would use its best efforts to have sales agreements amended and enforced by member underwriters in order to prevent the sale, by selling group members of IC shares to non-members of the selling group at a discount.) In accord with Section 26(f)(2) of Article III of the Rules of Fair Practice, Mr. Cody pointed out that he forsaw that the Committee had no established procedure to achieve this, so he suggested that a letter be sent by the Executive Director to underwriters and sponsors. This letter suggestion was adopted by the Board.

Item G. *Daily Price Changes.*

Ok to advise dealers in response to inquiries between "as of time" and "release time" (usually between 1:30 and 2:00) of the apparent direction.

GOVERNMENT EXHIBIT 20

EXHIBIT A

Transcript of Discussion
Re Investment Trust Rule—Rule 26

MR. VANCE: Apparently a number of questions have come up about investment trust matters that don't tie right into Rule 26. I thought I might try to explain the problems that have arisen, and then if there are any questions as to the effect of the rule on problems that you fellows have run into, I will do my best to try to answer them.

First, for the District Secretaries who were not with the Association at the time Rule 26 was drafted and put through—I believe it was two years ago this spring—I might say that the rule tries to do three things; first, under specific authority granted to the Association in the Investment Company Act, we set up a minimum basis for pricing trust shares—that is, open-end trust shares—so as to cut down to a practical minimum any so-called dilution that occurs when shares are sold during market hours.

What the rule requires is that shares must be priced at least twice each day, by inventory, so as to prevent any great variance between the price at which shares are issued and what the inventory value would be at the exact time of the sale. The problem is created by the fact that the market moves up and down and it is obviously impractical to take a complete inventory every ten minutes or every time that you get an order. By pricing on the basis of inventory twice every day we achieve a reasonable solution to the problem. And so far as we know, the Commission seems satisfied with it. While this is an essential part of Rule 26, it is nothing that need concern you fellows out in the field. It is a specific problem that applies solely to the underwriter and issuer at the time of the sale.

The other two things that the rule tries to do are: first, to protect investors in so far as repurchasing of shares is concerned. It does this in several ways which I shall be glad to go into if you have any questions. The second is to try to create more orderly distribution of investment trust securities. This, I feel sure, we have accomplished.

A problem that seems to have arisen recently is the question as to the maintenance of the public offering price on investment trust securities. Many dealers seem to think that there is an NASD rule which requires the maintenance of the offering price at the official public offering price established on the basis of inventory and as spelled out in the various prospectuses. That is not true. There is nothing in the NASD rules which requires any dealer to maintain a public offering price at any level. There is, however, a requirement in the Federal Statute—Investment Company Act of 1940—which says in effect that no dealer can sell to the public at any price except the official public offering price at the time the sale is put through.

We have tried to have that particular requirement duplicated in our rules, but the Commission at the time was very much invloved in the PSI case, and as a result we decided not to enter into any controversy and to stand purely on the section of the Investment Company Act, 22-D, that does make that requirement.

Several times I have raised the question as to whether the Association should do anything to attempt to enforce Section 22-D of the Investment Company Act—which is the section that requires maintenance of the public offering price on all sales to the public. This is a question of policy which I believe has not yet been decided.

Another question that has come up recently is that there are several houses which are not members of the Association, trading in the securities of open-end investment companies. These nonmember dealers maintain an active trading market, and dealers who are members of the Association have been wondering on what basis they can trade with the trader who is a nonmember.

There is another rule of the Association, as I understand it, which says that a member of the Association can sell a security to a nonmember-dealer only on the same basis as the member-dealer would sell the security to the public. And in the case of the open-end investment trust, a Federal statute has established the fact that a dealer can sell to the public only at the official public offering price. Therefore, if a member-dealer sells the shares of an open-end investment trust to a nonmember-dealer at below the official public offering price, he is violating a rule of the Association because the public offering price

in the case of an open-end investment trust is absolutely established by Federal statute and must be maintained.

Thus, the question of the inside market and the outside market, which comes up in a number of cases, as I understand it, when you try to apply the rule to trading between nonmember dealers and members does not come up with respect to shares of open-end investment trusts.

There have been several specific questions in connection with this phase of the problem. George Yancey, you asked a question a month or so ago which we haven't answered as yet. Do you want to raise that now, or have I answered it already?

MR. GEORGE YANCEY: The question came up in our District Committee and I asked it for the Committee. We had the impression that only dealers who had signed up on a syndicate agreement with a distributing trust were bound to maintain the offering price of that trust, but a dealer who had not signed up as a syndicate member of a distributing group could handle some other trust shares and would not be bound to maintain the public offering price of that trust share. If he bought it in the market and sold it at any price he wanted to, he would be doing the same thing as he would be doing had he purchased any other stock—it was just another security. That was the point that wasn't clear in my mind.

MR. VANCE: A dealer can trade with another dealer who is a member of the Association at any price he sees fit, but he cannot sell to the public at below the official public offering price. That is not because of any restriction in the Selling Group Agreement. It is because of a provision in the Investment Company Act.

MR. YANCEY: Regardless of whether he happens to be a member?

MR. VANCE: Regardless of whether he is a member of any selling group or what his position is.

MR. YANCEY: There is one other phase of this I would like to ask about. You have a dealer who is not a member of our Association, and he feels that he can purchase trust shares any place he wants to from the trading house and sell at any price.

MR. VANCE: The Investment Company Act specifically says "dealer", and a dealer is defined as being any person active in the security business within the United States,

whether or not he is a member of any association. So, if he is not a member of the Association, he still is bound by the Act.

QUESTION: What about the question of acting as agent for the buyer if the ultimate buyer happens to be a retail account?

MR. VANCE: An opinion has been handed down on Section 22-D which says that if a dealer—by that I mean anyone in the security business—acts as an agent, as a broker, between two individuals, there is nothing to prevent his effecting a transfer at any price agreed upon between the two individuals, the two principals. The problem that you run into, however, is that a dealer will attempt to get around 22-D by acting as a principal and selling through another dealer acting as a broker. The effect of such a sale is that the principal transaction runs through from the original dealer acting as the principal to the ultimate buyer, so that a violation of 22-D is involved.

As long as there is a dealer in the transaction acting as principal for his own account, the public offering price must be maintained.

QUESTION: Let's not complicate the question. Let's keep this simple illustration of acting as agent for the buyer. A dealer can act as agent for the buyer and seller if both the buyer and seller happen to be retail accounts. Is that right?

MR. VANCE: Yes.

QUESTION: Now, let's take another illustration and say there are two agents in which one acts as agent for the seller and one acts as agent for the buyer—is that a legal transaction?

MR. VANCE: That is a legal transaction. I wish that counsel were here to explain whether you are in effect acting as a principal if you solicit the transaction, but I don't think we ought to get into that today. Let's leave it simply that there can be one broker or ten brokers in-between so long as no dealer is involved, acting as principal for his own account.

QUESTION: I was wondering about an instance I bumped into of a dealer who is not registered with the SEC. Would he be bound by the Federal statute?

MR. VANCE: He is doing business within the state?

QUESTION: Yes.

MR. VANCE: Counsel says if he is doing an interstate business, he is bound by Federal statute. If he is doing an intra-state business, there is a question as to it.

QUESTION: Mr. Vance, we have a problem down in our District as far as the disclosure on confirmations and sale of these investment trust shares is concerned. There is a difference of opinion among the various brokers dealing with the same investment trust as to the manner in which they should confirm.

MR. VANCE: I can only give you my opinion on this. I think that is a problem for counsel to answer. In the case of my own company, we are underwriters and we act as a principal when we buy shares from the trusts. We confirm them to the dealer as principal and require that the dealer in turn act as principal for his own account. Transactions of this nature are relatively simple; disclosure is made in prospectus and the sale made on the basis of the prospectus. There are several reasons why we operate as we do. One is the question of liability on the sale. There is an even more important question that has never been settled by the SEC, and that is whether, if the underwriter acts as an agent, he passes on to the dealer a possible underwriting liability.

There are a number of underwriters who act as agent. The underwriter acts as agent and the dealer in turn acts as agent. The purpose of this, of course, is to get around transfer taxes. Some dealers contend that although they are acting as an agent, as a broker in effect, they do not need to disclose on their confirmations the amount of the brokerage commission they receive. I don't see how they can get around such disclosure. I think the commission on the broker's transaction should be disclosed. I understand, however, that some dealers hold to the contrary. This question is now before the Investment Trust Committee and we shall report to you on it.

QUESTION: If you sell an investment as agent, you are agent for the seller and not the buyer, and you would not have to disclose the commission. Say you are placing shares with the public. You are the agent for the seller, not the buyer, and you wouldn't have to disclose that. In acting as agent for the seller, you can disclose your commission to the seller and not to the buyer.

MR. VANCE: I will let counsel answer that.

MR. LINDSEY: That is the very question which has been raised. The contention has been made at the Commission (I don't know whether it is proper) that when you are acting as agent in that capacity, if you are a true agent for the seller, that is proper. But the Commission contends —and there are other people who contend—that actually you are agent for both parties of the transaction, and therefore you should disclose it to both sides of the transaction.

QUESTION: May I ask a question about the responsibility of the dealer when he liquidates shares for an investor? Does he have any responsibility further than seeing to it that the retail customer gets the full liquidating value at that time?

MR. VANCE: Rule 26 says that if a dealer is a member of a Selling Group, he must agree to pay his customer not less than the official liquidating value at the time the repurchase goes through, although he may charge a reasonable commission for handling the transaction. We ran into considerable difficulty trying to control dealers who are not members of Selling Groups. Dealers who are not members of any group, particularly the trading houses, have in some instances attempted to buy shares from investors at below the official liquidating value and then turn around and immediately resell those shares at the liquidating value to the issuer.

We didn't want to spell out a price at which everyone had to buy shares, so we put in the requirement that the dealer who is not a member of a selling group must be a holder of record at the time he liquidates shares. This, in effect, means that the dealer who is not a member of a selling group (and thus subject to the requirement I have mentioned) cannot make a riskless profit because he has to buy the shares and hold them for several days while he is going through the process of transfer.

However, except for the dealer who is a member of a selling group, there is no restriction on the price which must be paid to the customer.

QUESTION: When you talk about a reasonable commission, that implies an agency contract. I am thinking of a situation in which there may be a street market, and there are at least a few instances in which there is a street market in which the bid is higher than the liquidating.

MR. VANCE: That is true.

QUESTION: It is perfectly legal to see to it that the retail customer gets at least the liquidating, and the dealer can act as the principal and sell into the street market.

MR. VANCE: There is nothing to prevent that in the rule. There are certain provisions in some selling group agreements where the dealer—

QUESTION: I assume there is no selling group agreement.

MR. VANCE: There is nothing in the NASD rule to prevent the dealer paying a customer whatever he wants to and selling into the street market.

QUESTION: Is there anything in the Federal statute to prevent that?

MR. VANCE: No.

QUESTION: You can buy it for your own account as well as act as agent for the underwriters?

MR. VANCE: That is right.

February 11, 1941.

Mr. C. F. Cassell,
C. F. Cassell & Co.,
112 Second St., N. E.,
Charlottesville, Va.

Dear Mr. Cassell:

This is in reply to your letter of February 10 containing questions on the scope and provisions of the proposed amendment to the Rules of Fair Practice of the Association, adopted by the Board of Governors on January 20, 1941, relating to the underwriting and distribution of securities of open-end investment companies.

1. First, you ask, in essence, whether you, as a member of the Association, may sell securities of open-end investment companies on the over-the-counter market to another member of the Association if you are not a party to a selling agreement referred to in subsection (c) of the proposed amendment.

The answer to this is yes.

2. "Does each certificate have to be registered in our name before sale is made?"

No, unless you are not a party to a selling agreement and the sale is made to an underwriter or issuer.

3. "If we are not members of the National Association of Securities Dealer, Inc., is there anything to prohibit our trading investment trusts with other dealers who are not members?"

Of course, if you are not members of the Association, you will not be directly prohibited by the Rules of the Association from doing anything. To my knowledge there is nothing in the Investment Company Act of 1940 to prohibit dealers who are not members of the Association from trading securities of investment companies with other non-member dealers.

Yours very truly,
Wallace H. Fulton,
Executive Director.

7-m

GOVERNMENT EXHIBIT 21

GOVERNMENT EXHIBIT 22

March 29, 1954

Mr. D. J. Conway
Secretary, District Committee No. 2
National Association of Securities Dealers, Inc.
425 Bush Street
San Francisco 8, California

Dear D.J.:

Your letter of March 22, 1954, raises certain questions about transactions in investment company shares in the absence of a sales contract between the underwriter and the dealer involved.

As you describe the situation, the inquiring firm has, as a matter of policy, limited the number of selling group agreements it maintains with investment company sponsors to approximately twenty four. It has received through salesmen, however, orders for the shares of our investment company with whose sponsor they do not have an agreement. The dealer does not wish to sign an agreement with the sponsor of this investment company for a single transaction. The dealer reports that the wholesaler of the sponsor with which the dealer does not have an agreement has advised that the dealer could arrange to buy the shares "at some agreed price" from another dealer who does have a selling group agreement.

Section 26(c) states that no member who is an underwriter of the securities of open-end investment companies shall sell any such security at a price other than the public offering price unless (1) such dealer or broker is a member and (2) at the time of the sale a sales agreement is in effect between the parties.

It seems to me that if the transaction above were undertaken in the manner described, the sponsor of the investment company involved would be placed in the position of violating this section, unless the shares are to be resold by the dealer possessing the sales agreement to the inquiring dealer at the public offering price.

There is a further consideration, in that Section 26(f)(2) states, in part, that no member shall purchase securities of any open-end investment company other than for in-

vestment, except for the purpose of covering purchase orders already received. In the above transaction, should the dealer possessing the sales agreement take down the shares allegedly for investment, and actually resell them to the inquiring dealer "at some agreed price," the probability is, in my opinion, that the dealer taking down the shares would be in violation of Section 26(f)(2), unless the agreed price was the public offering price.

Still further, the typical selling group agreement provides that underwriters of investment company shares may sell to dealers having such selling group agreements at less than the public offering price only to fill orders from their customers, *none* of whom may be dealers. Of course, it is not known in this case whether the selling group agreement of the underwriter involved here contains this clause; such a provision is, however, standard in most agreements.

All in all, the transaction does not seem to be a proper one, and so long as the inquiring firm is not willing to arrange for a selling group agreement with the underwriter involved, it appears that the most practical course for the inquiring dealer to follow is to obtain the shares in the open market from one of the several specialists, such as Asiel & Co., or, perhaps, Merrill Lynch, or whoever makes the best market in such shares on the West Coast.

Sincerely,
Wallace H. Fulton
Executive Director

RM:mtn
7426

GOVERNMENT EXHIBIT 23

MEMORANDUM

March 2, 1956

TO: Mr. Fulton
FROM: Ray Moulden
SUBJECT: Section 26(c) of Article III of the Rules of Fair Practice

Brieger has raised certain questions as to the propriety or legality of procedures of some investment company sponsors under Section 26(c), as to (1) acceptance of orders prior to receipt of signed selling group agreement, and (2) timing and acceptance of orders received at or after the price change.

I've checked this with the Chairman of the Committee and with Counsel and the Assistant to the Executive Director. While not necessarily unanimous, these are the tentative conclusions:

I. 1. A selling group agreement can be said to be effective when a dealer has agreed by telephone, teletype or telegraph to sign and return the document (on the basis that all business done in the securities business is largely based on oral commitments, subject to some sort of later confirmation). There is no reason therefore (since for purposes of 26(c) and agreement is in effect) why a sponsor may not accept an order for shares from a dealer the same day or simultaneously that oral or other agreement is made by the dealer to sign and return the selling group agreement.
(If, of course, the commitment is not carried out, the situation is possibly the same as any other broken contract in the business.)
2. Vance, Sanders practice in more selective (they can afford to be). If the dealer is known or can be checked quickly, they'll accept the order subject to receipt of the signed agreement. If not known, and if the dealer won't commit to a long-term interest in handling shares, Vance, Sanders tells him to find the stock in the street or sell his customer something else.

II. 1. The price-change situation is more complex and we should bear in mind the opposing positions of responsibility of the sponsor/underwriter and the dealer, perhaps weigh the public interest involved—if any.

a. The underwriter is responsible to the investment company existing stockholders. Has duty to see to it that the trust receives the highest price possible.
b. The dealer is responsible to his customers. His duty is to see that the customers pay the lowest price possible.

The situation is just the reverse when a sale or redemption is involved.

2. a. In general, it seems to be the practice to accept orders at the prior-to-change price when "in-hand" at time of the change; when marked (teletyped or telegraphed) as placed prior to the change, though received afterward; when dealers say they have been on the phone or otherwise trying to get the order in for some time prior to the change. In other words, they are accepted on the basis of when initiated, and when this can be documented. (In general, that is; I'm sure the documentation isn't too good always.)

b. Vance, Sanders' situation is somewhat helped by its system of branch offices. These offices take orders up to the price change, then shut down and take care of confirmations and other details, leaving the wires open into Boston for last-minute direct orders, and then come in later on the wire with the material for the day.

But where an underwriter uses another dealer to clear, it isn't so easy. He's not so interested in getting in under the wire; he has his own business to handle and there may be some sloppiness in execution from the 26(c) standpoint.

c. We have to appreciate also that there really is a congestion problem in the last hour before a price change, and particularly when it appears the incoming price will be higher. You know, of course, that the standard practice among alert dealer firms is to hold customers orders through a day (or longer) waiting for an up-tick. On the first up-tick,

in they all go, and when that's compounded all over the country, it makes quite a congestion problem.

I'd like to discuss this with you.

Respectfully submitted,

RM:mtn
554

Opinion File
Investment Company Act '40
Section 22(d)—Redeemable Securities

July 25, 1941

Mr. John M. Baker
Stolle, Baker & Co., Inc.
Old National Bank Building
Spokane, Washington

Dear Mr. Baker:

With respect to the problem which you raise in your letter to me of July 22, I would think that, so long as you have selling agreements in effect with the national distributor of both of the trusts to which you refer, your dealings in the shares of such trusts as a dealer or broker would be governed by the provisions of the sales agreements, and as I do not have up-to-date copies of those agreements before me, I, of course, can not say what they provide with respect to such trading.

If you did not have such selling agreements in effect, then your activities as a broker or dealer in the shares of these trusts would be governed by Section 22(d) of the Investment Company Act of 1940. Sometime back, we asked the Commission for an opinion as to the applicability of said section to brokerage transactions and received an opinion from the General Counsel of the Commission in answer thereto. I am accordingly enclosing a copy of that opinion herewith, which I think you will find self-explanatory.

Very truly yours,
Wallace H. Fulton
Executive Director

GOVERNMENT EXHIBIT 24

INTERPRETATION
Investment Company Act 1940
Section 22 (d)

May 5, 1954

Mr. H. Peter Schaub, Jr.
Harry P. Schaub, Inc.
744 Broad Street
Newark 2, N. J.

Dear Mr. Schaub:

I have your letter of April 28, 1954. In response thereto, I wish to advise you that you could act as agent for both Customer A and Customer B in connection with the sale of XYZ Fund shares by Customer A and the purchase thereof by Customer B. In such event you need not maintain the public offering price, but it will be necessary for you to make disclosure to each customer as to commissions received or to be received. In that way you may reduce your over-all mark-up and load.

I hasten to point out to you, however, that you may sell only at the public offering price in a principal transaction, otherwise there is a violation of *Section 22 (d)* of the Investments Company Act of 1940, and the Association's Rules. I call your attention to pages E-107, E-108 and E-109 of the Association's Manual, which sets forth examples of this type of situation.

You will appreciate that the foregoing is an office opinion and not an interpretation of the Board of Governors, but is, I believe, consistent with the pages of the Manual cited.

Very truly yours,
Wallace H. Fulton
Executive Director

GOVERNMENT EXHIBIT 25

GOVERNMENT EXHIBIT 26

THE STATE OF WISCONSIN
DEPARTMENT OF SECURITIES
23 West, State Capitol
Madison 2, Wisconsin

July 18, 1961

National Association of Securities Dealers, Inc.
1707 H Street N. W.
Washington 6, D. C.

Attention Mr. Wallace H. Fulton
Executive Director

Gentlemen:

On or about May 22, 1961, this department issued a memorandum to Wisconsin securities dealers advising that shares of investment companies which are registered in Wisconsin may be purchased for a customer as his agent even though the sale is solicited, provided: that the confirmation states the price at which the security is purchased for the customer and a commission of not more than 5% is added thereto; and that the total cost to the customer does not exceed the asset value at the time of the transaction multiplied by 100/92.5.

We have been advised that the Chicago office of the National Association of Securities Dealers has informed one or more Wisconsin dealers that if they follow the above memorandum they will be in violation of the "Federal Law." We assume the Federal Law referred to is Section 22 (d) of the Investment Company Act of 1940, which requires a dealer to sell investment company shares at the current offering price, with certain exceptions set forth in that section of the law.

It is our position that Section 22 (d) of the Investment Company Act of 1940 applies to principal transactions by dealers. Section 22 (d) states ". . . no principal underwriter or dealer shall sell any such security . . . except at a current offering price . . ." The wording refers to a dealer selling, which would constitute a principal transaction as compared to a dealer purchasing for a customer on any agency basis. We call your attention to an opinion of General Counsel of the Commission, dated March 10, 1941,

directed to the National Association of Securities Dealers in response to a request for an opinion interpreting Section 22 (d) of the Investment Company Act of 1940, 41-44 CCH, 75140. That opinion stated that a dealer who is acting in the capacity of an agent for a selling investor or for a selling investor and a purchasing investor may make the sale at a price other than the current offering price described in the prospectus. We also call your attention to the Exchange Act Release No. 3769, dated January 4, 1946, 45-47 CCH, 77154, in which the above opinion was cited in a matter relating to the interpretation of Section 22 (d). This release also states that acting as agent for buyer or seller, with appropriate disclosure, a dealer unrestrained by Section 22 (d) could and should make the best possible deal for his customer.

It is apparent that the provisions of Section 22 (d) apply only to principal transactions, and this is further evidenced by the exception to that section granted in 1941 to permit varying prices for varying amounts of securities, provided the prospectus sets forth the price which a purchaser of any specific amount would be required to pay. Release 89, March 14, 1941, 41-44 CCH, 75141.

We are of the opinion that the above justifies the position of the department as set forth in our memorandum to dealers of May 22, 1961, and we cannot understand the position taken by your Chicago office. We request a clarification of your position or a retraction of the statement made to Wisconsin dealers by your Chicago office.

Very truly yours,
/s/ Edward J. Samp,
EDWARD J. SAMP
DIRECTOR

RJL:sl

c.c. - Mr. John F. Brady
Securities and Exchange Commission, Washington, D.C.
Securities and Exchange Commission, Chicago, Illinois

July 21, 1961

Mr. Edward J. Samp, Director
Department of Securities
The State of Wisconsin
23 West, State Capitol
Madison 2, Wisconsin

Dear Mr. Samp:

Your letter of July 18, 1961, describing your understanding of the opinion of Counsel and releases by the Securities and Exchange Commission regarding agency sales of investment company shares is in accordance with our views on this matter. Moreover, it also conforms with the understanding of the Investment Companies Committee of this Association.

I am sending a copy of this letter to our Chicago office.

Sincerely,
Wallace H. Fulton
Executive Director

rm/shh

GOVERNMENT EXHIBIT 27

GOVERNMENT EXHIBIT 28

WILLIAM H. CLAFLIN, III
Chairman
ROBERT L. CODY
Vice Chairman
GRAHAM JONES
Vice Chairman
BLANCKE NOYES
Treasurer
WALLACE H. FULTON
Executive Director

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1707 H Street N.W. Washington 6, D. C.

September 1, 1961

Mr. John K. Kyle, Director
Department of Securities
23 West, State Capitol
Madison 2, Wisconsin

Dear Mr. Kyle:

Please refer to a letter over Mr. Edward J. Samp's signature dated July 18, 1961, and my reply thereto dated July 21, 1961.

My attention has been called to certain interpretations of my letter which lead me to conclude that a further amplification is necessary in order to remove misapprehensions which appear to be rather widespread in Wisconsin.

I agree with the view expressed by Mr. Samp that Section 22(d) of the Investment Company Act of 1940 does not apply to a transaction where a broker-dealer acts as agent for a purchasing investor in buying shares of an open-end investment company if the seller is another investor, or as agent for a selling investor and a purchasing investor in effecting a purchase of such shares. In those cases, neither the investment company, nor the principal underwriter, nor a dealer acting as principal is selling the shares. Accordingly, there is no statutory requirement that the transaction be at the current public offering price. In these narrow cases, the only requirement is that the agent act faithfully for his customer, state correctly the capacity in which

he acts and the price paid for the shares, and charge a commission which is reasonable under the circumstances.

I should point out, however, that the opportunities for effecting such transactions are not likely to be frequent. If the broker-dealer acting as agent for the purchasing investor, buys from (a) the investment company, directly or through the principal underwriter as its agent, or (b) the principal underwriter, acting as principal, or (c) *another dealer, who acts as principal,* the sale must be made at the current public offering price.

If the agent for the purchasing investor is not able to find another investor who wishes to sell the shares and so goes to the investment company or its principal underwriter or a dealer, I believe it is clear that he is buying the shares as agent for an investor. He cannot act as if he were a dealer on one side of the transaction and as agent on the other. If the broker-dealer discloses his agency capacity, the potential seller will be ill-advised to make the sale, since the seller is presumed to be responsible for the maintenance of the offering price but is not in a position to control the actions of the broker-dealer acting as agent for the purchasing investor. In turn, if the potential seller does make the sale and the agent broker-dealer confirms to his customer at other than the current offering price, such broker-dealer will be in a precarious situation, to say the least.

In summary, broker-dealers should not be encouraged to believe that by acting as agent they are exempt from Section 22(d). This is not the case in the ordinary situation and is true only in the rare instance where the broker-dealer acts as agent for a selling investor. We believe that your Notice to Dealers dated May 22 should be amended accordingly.

Very truly yours,
/s/ Wallace H. Fulton
WALLACE H. FULTON
Executive Director

MANAGERS AND DISTRIBUTORS OF: COMMONWEALTH INVESTMENT COMPANY, COMMONWEALTH INCOME FUND, COMMONWEALTH STOCK FUND

NORTH AMERICAN SECURITIES COMPANY
Investment Company Managers Since 1925
615 Russ Building, San Francisco 4

August 25, 1961

Mr. Wallace H. Fulton
National Association of Securities Dealers, Inc.
1707 H Street, N. W.
Washington 6, D. C.

Dear Wally:

I am enclosing two copies of a memorandum in which I have tried to record my thoughts and observations on the problem raised by Samp's letter to dealers last May.

I am sorry the memorandum is so long, but this is just the way it came out. In a nutshell, I am convinced that under the Lane opinion, Section 22(d) does not apply where a broker-dealer acts as agent for a selling investor, but that Section 22(d) does apply in any situation where a broker-dealer has entered the series of transactions as a principal, even though the broker-dealer making the retail sale (or executing his customer's purchase order) acts as agent. This is the typical situation when a broker-dealer acting as agent acquires shares of an investment company from a street-market dealer.

Since all of the papers you gave me in Seattle, as well as those given to me by John Hodges were photocopies of material in the Executive Office, I assume that there is no need for me to return these copies to you. Obviously, I shall be glad to do so if you want them, but the notes I have made on them might be helpful to me for future reference.

With best regards,

Sincerely,
/s/ Bob
Robert L. Cody

RLC/jh
Enclosure

GOVERNMENT EXHIBIT 30

MEMORANDUM

To Mr. Wallace H. Fulton August 22, 1961
From Mr. Robert L. Cody

Re. Application of Section 22(d) of the Investment Company Act of 1940 to transactions in which a broker-dealer acts as agent for a purchasing investor.

As you requested in Seattle, I have reviewed the correspondence in connection with Mr. Samp's notice to dealers dated May 22, 1961 regarding agency transactions in investment company shares.

Although I discussed this matter briefly with Frank Johnson in Seattle, I did not have an opportunity to do so after I had received the complete file. Consequently the views expressed in this memorandum are my own and do not necessarily represent Frank's thoughts on the matter.

It is evident that although Samp was presumably interpreting Wisconsin regulations for Wisconsin dealers, he was confident in his letter of July 18 that the suggested procedure was not in violation of Section 22(d). This confidence, in turn, was based primarily upon Chester Lane's opinion dated March 10, 1941, in which Lane stated that "if a broker-dealer in a particular transaction is acting solely in the capacity of agent for a selling investor, or for both a selling investor and a purchasing investor, the sale may be made at a price other than the current offering price described in the prospectus."

In this opinion, Lane also said that in his view the term "dealer," as used in Section 22(d), refers to the capacity in which a broker-dealer acts in a particular transaction. This is somewhat at variance with the definition of a dealer in Section 2(a) of the Act, which does not limit the term to a specific transaction but says that a dealer is any person *regularly engaged* in the business of buying and selling securities for his own account.

It might be argued that if a broker-dealer meets the definition of Section 2(a)(11) of the Act, he is obligated to maintain the offering price even though in the specific transaction he was acting as agent. I don't think it is necessary, however, to base a position upon this definition.

It is essential to keep in mind the roles which a broker-dealer may play in any single transaction. I say this because there seems to be some confusion in this regard in the correspondence in this case. Normally, of course, a broker-dealer acts as principal in the sale of investment company shares. This is true whether the underwriter from which the broker-dealer acquires the shares is acting as principal or as agent for the investment company. In the exceptional kind of transaction we are discussing here, a broker-dealer may act as agent for a purchasing investor, or as agent for a selling investor, or as agent for both the purchasing investor and the selling investor. In any transaction in which the broker-dealer acts as agent, the broker-dealer cannot also act as principal.

I believe that the Lane opinion makes it very clear that where the broker-dealer is acting as agent for the purchasing investor and the selling investor, the sale may be made at a price other than the current offering price. I believe that Bill Shelley concurs with this position also. Naturally, the broker-dealer is required to make the necessary disclosure to his customers regarding his actions as agent.

The Lane opinion is, I believe, a little confusing when it refers to transactions in which the broker-dealer acts solely in the capacity of agent for a selling investor. Shares which the broker-dealer sells as agent for the investor must be sold either to (a) the investment company, (b) the underwriter, (c) a purchasing investor, (d) a purchasing investor for which the broker-dealer is acting as agent, (e) a purchasing investor through another broker-dealer which is acting as agent for the purchasing investor, or (f) to a broker-dealer purchasing as principal. No question regarding Section 22(d) is involved in (a), (b), or (f). Further, the Lane opinion makes it clear, as I have indicated above, that Section 22(d) does not apply in (d). This leaves (c) and (e). The Lane opinion says that in the case of (c), Section 22(d) does not apply, and I do not believe that anything is mentioned about (e). It would appear, however, that the reasoning which excludes (d) would also exclude (e).

Mr. Samp appears to have failed to take into account the next to the last paragraph of the Lane opinion. This paragraph states that if a broker-dealer sells as principal, Section 22(d) applies even though there is an intervening agent

between the principal and the investor, whether the investor is a selling investor or a purchasing investor. Thus, the source of the shares which the broker-dealer sells as agent becomes a controlling factor.

In the rare situation where the broker-dealer acts as agent for the selling investor, Section 22(d) does not apply, whether the broker-dealer acts as agent of the purchasing investor or simply sells to the purchasing investor on behalf of the selling investor. As indicated, this situation is bound to be rare, and ordinarily the shares acquired for the purchasing investor must be acquired from a source other than a selling investor. Ordinarily the source will be another broker-dealer. (Obviously, this excludes the normal situation under which the shares are acquired from the underwriter pursuant to a sales agreement which provides that the broker-dealer must act as principal.)

As a practical matter the problem we face is the resale of shares acquired from a street-market dealer who is acting as principal. The Lane opinion seems to me to cover this situation. Where the street-market dealer acts as principal, which is ordinarily the case, it is clear that a retail sale by the street-market dealer must be at the current offering price. Furthermore, even if there is an intervening broker-dealer acting as agent (and ordinarily this would be as agent for the purchasing investor), the offering price must be maintained.

This strikes at the very heart of the street market. It means that the street-market dealer must not only maintain the offering price in retail sales as principal, but that it must be responsible for the price at which another broker-dealer sells the shares, unless that broker-dealer purchases from the street-market dealer as principal.

A broker-dealer cannot purchase as principal and turn around and sell to its customer as agent. It appears to me that the original letter which you wrote to Mr. Samp on July 21 would have been appropriate if it had related solely to agency transactions where the source of the shares was a selling investor and no broker-dealer entered the picture as a principal. Actually, however, this would be extremely rare, and a letter could properly be sent to Samp's successor expanding upon this position, pointing to the misuse which has apparently been made of the earlier letter. A key point

is that a broker-dealer cannot purchase shares as principal and turn around and sell those shares to a customer as agent for that purchasing customer. The Lane opinion "exemption" applies only where the broker-dealer is acting as agent for a selling investor; Section 22(d) applies whenever the broker-dealer has acted as principal or when any other broker-dealer in the course of a series of transactions which result in the sale of shares to a purchasing investor has acted as principal.

I don't think the solicited versus unsolicited question is particularly pertinent, either in Samp's notice to dealers or in Bill's letter of August 4. The main points are the capacity in which the broker-dealer acts and where the broker-dealer gets the shares, not whether he solicits the order.

Regarding the draft which Bill sent to Ray on August 8, I have these comments:

I would add "broker-" before "dealer" in line 3 of paragraph 3 and in line 3 of paragraph 4.

In paragraph 4, I would delete the last four lines, except the word "price".

On page 2, I would add "as agent" before the word "for" at the end of line 3, and omit "In other words," in line 4.

I would delete the last sentence of the same paragraph, and add the following: "If the broker-dealer discloses his agency capacity, the potential seller will be ill-advised to make the sale, since the seller is presumed to be responsible for the maintenance of the offering price but is not in a position to control the actions of the broker-dealer acting as agent for the purchasing investor. In turn, if the potential seller does make the sale and the agent broker-dealer confirms to his customer at other than the current offering price, such broker-dealer will be in a precarious situation, to say the least.

In summary, broker-dealers should not be encouraged to believe that by acting as agent they are exempt from Section 22(d). This is not the case in the ordinary situation and is true only in the rare instance where the broker-dealer acts as agent for a selling investor. We believe that your Notice to Dealers dated May 22 should be amended accordingly.

Robert L. Cody

RLC/jh

GOVERNMENT EXHIBIT A-1

(Title Omitted in Printing)

PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS ADDRESSED TO NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, plaintiff requests that defendant National Association of Securities Dealers, Inc. ("NASD"), within days after service of this request, admit that each of the following statements is true:

1. In March, 1959, after having polled the members of its Investment Companies Committee, defendant NASD approached the Staff of the Securities and Exchange Commission ("SEC") with a proposed Interpretation of Rule 26(f)(2) of the NASD Rules of Fair Practice which would have prohibited dealers from purchasing shares for resale to other dealers.

2. On March 11, 1959, SEC Staff officials indicated that nothing in the securities statutes or their legislative history would support the proposed Interpretation of Rule 26(f)(2) of the NASD Rules of Fair Practice, that the Staff would oppose the proposed Interpretation if it were formally submitted to the Commission, and that NASD enforcement of selling group agreements was prohibited by prior Commission decision.

3. On June 22, 1959, the NASD sent a letter to all member underwriters and distributors of investment company shares urging them to amend their selling group agreements to prevent dealers from purchasing shares for resale to other dealers and urging strict enforcement of agreements so amended.

4. The NASD did not submit the letter referred to in paragraph 3 above to the SEC for prior approval.

5. For many years, up to and including the date of the filing of the complaint herein, the NASD had knowledge of the existence of a secondary dealer market in mutual fund shares.

6. For many years, up to and including the date of the filing of the complaint herein, the NASD acted upon the understanding that a brokerage market in mutual fund shares did not violate the Investment Company Act, as

amended, 15 U.S.C. § 80 a-1, *et seq.* ("Investment Company Act").

7. For many years, up to and including the date of the filing of the complaint herein, the NASD acted upon the understanding that a secondary dealer market in mutual fund shares did not violate the Investment Company Act.

8. For many years, up to and including the date of the filing of the complaint herein, a small number of firms actively made secondary dealer markets in mutual fund shares.

9. For many years, up to and including the date of the filing of the complaint herein, the SEC knew of the existence of a secondary dealer market in mutual fund shares.

10. The SEC has never alleged that a secondary dealer market in mutual fund shares violates the Investment Company Act.

11. The SEC has never alleged that a brokerage market in mutual fund shares would violate the Investment Company Act.

12. At no time prior to the filing of the complaint herein did defendant NASD complain to the SEC, seek a declaratory judgment from the SEC or a District Court, or bring suit in a District Court, alleging that a secondary dealer market or a brokerage market violated the Investment Company Act or the Maloney Act, 15 U.S.C. 780, *et seq.*

13. The NASD Manual for many years has stated that a member could execute a mutual fund transaction as agent between two customers at less than the public offering price without violating Section 22(d) of the Investment Company Act.

14. The NASD Manual for many years has stated that a member could sell a mutual fund share in the secondary dealer market to another dealer at less than the public offering price without violating Section 22(d) of the Investment Company Act.

15. The SEC has known of the provisions in the NASD Manual referred to in paragraphs 13 and 14 above.

16. The SEC has never requested the NASD to change the provisions in the NASD Manual referred to in paragraphs 13 and 14 above nor has it ever suggested that either of these provisions was erroneous.

17. For many years, the NASD has acted upon the understanding that shares of defendant mutual funds are trans-

ferable either fully or in the customary manner in which shares of stock are transferable.

18. For many years, up to and including the date of the filing of the complaint herein, the share certificates of defendant mutual funds contained no restrictions prohibiting secondary dealer markets or brokerage markets in the shares of defendant funds.

DANIEL R. HUNTER

PHILIP L. VERVEER

RONALD J. SILVERMAN
Attorneys, Department of Justice

EXHIBIT A

EXHIBIT A OF DEFENDANT BACHE & CO., ET AL. ATTACHED TO REPLY MEMORANDUM IN SUPPORT OF MOTIONS BY THE DEFENDANT DEALERS TO DISMISS THE COMPLAINTS, FILED JULY 20, 1973

ASIEL & CO.
NEW YORK STOCK EXCHANGE BUILDING
NEW YORK

August 29, 1940

Mr. Wallace H. Fulton, Executive Director
National Association of Securities Dealers, Inc.
821 Fifteenth Street, N. W.
Washington, D. C.

Dear Sir:

We understand that the Executive Committee of the Board of Governors of the National Association of Securities Dealers is about to consider a proposed addition to Article 3 of the Rules of Fair Practice of the Association. This concerns the activities of members in connection with the securities of open end management companies.

It is our opinion that Section 26, sub-section "F" of the proposed addition will force all dealers who may have sales agreements with underwriters of open end shares to dispose of *presently outstanding* shares only to the underwriters at the underwriter's bid price unless they happen to have a retail order which they can fill with these shares. We object to this provision. We consider that it is definitely contrary to the interest of the members and the investing public to restrict the bid side of the market for the 90 million presently outstanding open end shares.

The underwritings covering these shares are not limited to comparatively short periods as are the usual distribution syndicates formed to sell particular issues, but in many instances have continued over a period of years. Therefore, we feel strongly that a free market should be allowed to exist for shares which have been in investors hands, sometimes for years.

Sub-section "H" seems very objectionable to us. It will give the sanction of a National Association of Securities Dealers rule to a proposed discriminatory practice on the

part of the underwriters. This provision would make it necessary for an independent dealer to become a record owner for any security tendered for repurchase by the issuer or underwriter but would not require this of other dealers.

We also object to sub-section "I" because we think it puts the National Association of Securities Dealers on record as not objecting to and possibly encouraging the type of discrimination mentioned above.

We wish to urge you to place our views in this connection before the Executive Committee with the hope that they will delete the above mentioned provisions from the proposed addition to the Rules of Fair Practice of the Association before submitting it to the membership for a vote.

In order to acquaint you more fully with our views we enclose a memorandum on the law itself which we presented to the S. E. C.—unfortunately too late to have any effect.

Yours very truly,

NHW/db

August 26, 1940.

Mr. Robert H. White,
Asiel & Co.,
New York Stock Exchange Bldg.,
New York, N. Y.

Dear Mr. White:

We acknowledge receipt of your letter with regard to the proposed addition to Article III of the Association's Rules of Fair Practice and enclosed Memorandum Covering S. 4108 which you presented to the Securities and Exchange Commission.

Your views in this connection will be placed before the Executive Committee for their consideration.

Very truly yours,

Wallace H. Fulton,
Executive Director

MEMORANDUM COVERING S. 4108

A Bill to provide for the registration and regulation of investment companies and investment advisers, and for other purposes.

1. *How Street Dealers Operate:*

As we read Sec. 22(d) of the proposed bill, it will seriously curtail free "street" trading in the redeemable securities of open-end investment companies.

As of June 30, 1940, eighty active open-end investment companies had about 90,000,000 shares outstanding, valued at about $375,000,000. This is indicative of the large floating supply of *presently outstanding* shares which furnishes the medium for dealings by the street dealer. The street dealer purchases these shares from the investor who prefers to sell his shares in the free and open market instead of redeeming them or selling them back to the principal underwriters. The investor prefers to do this for several reasons.

First, it may take several days to forward a trust certificate for physical presentation to secure redemption, whereas there is no delay involved in selling immediately to a street dealer.

Second, the investor may get a higher price from the street dealer than from the investment company on repurchase.

The street dealer, by handling numerous inquiries to buy and sell these securities, is in a position to make a close market, to the advantage of the private investor; and by maintaining an extremely flexible and sensitive market, as contrasted with the rigid market of the underwriter, he is able to give the investor the full benefit of stock market fluctuations.

2. *Section 22(d) of the proposed law:*

Subdivision (d) as presently proposed reads as follows:

"(d) No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no

principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter or the issuer, except at a current public offering price described in the prospectus: ***"

Under this provision the street dealer will not be able to sell any of these shares to a broker or individual except at the current public offering price. This current public offering price represents the price established by the principal underwriter after adding a sales load of approximately 7½% or 8% to the asset value of the shares, and is almost always higher than the price at which the same shares could be procured from the street dealer. If Section 22(d) goes into effect, it will be impossible for an individual investor or a broker to take advantage of the lower market made by the street dealer.

3. *The purported "basis" of Section 22(d):*

It has been asserted that the operations of street dealers have resulted in certain abuses, and the enactment of Section 22(d) will eliminate these abuses. The claimed "abuses" are that the activities of the independent dealers:

(a) Create unfair competition between "authorized" dealers (i.e. dealers in privity with the principal underwriters) and street dealers, to the prejudice of the former;

(b) Make possible "raids" on the investment trusts;

(c) Are conducive to switching operations; and

(d) Frequently result in riskless trading and the dilution of trusts.

We submit that these "abuses" may not properly be laid at the door of the street dealer.

4. *"Unfair Competition":*

When shares are sold in the first instance by the principal underwriter through authorized dealers to the individual investor, the price includes all selling expenses, plus a selling profit to both the authorized dealer and the principal underwriter.

If an investor later sells these shares to a street dealer and the latter resells them in the open market to another investor or a broker at a price which does not include the full amount of the original sales load, no unfairness results to the authorized dealer. He made his selling profit on the original transaction. The investor is benefitted by securing

the shares at the lower price. It would seem highly unfair and unjust to the investor to keep burdening each successive transaction with a sales load.

5. *"Raiding" trusts.*

"Raiding" occurs when there is a concerted campaign to persuade investors to liquidate their holdings in a certain trust. It is usually instigated by the selling organization of a rival trust. The street dealer is not involved in such operations.

6. *"Switching":*

Raiding and switching are related operations. The purpose of a raid ordinarily is to persuade the holders of shares of one trust to unload their holdings and to purchase instead the securities which are being offered for sale by the selling organization engineering the raid. The street dealer customarily deals with brokers and dealers. He does not as a rule come in actual contact with individual investors, and has no opportunity to participate in or to instigate switching operations.

7. *Dilution and Riskless Trading:*

The problem of dilution and riskless trading is inherent in the existing pricing method of selling open-end shares. Dilution occurs when shares are sold by an investment company at less than asset value at time of sale. This is due to the fact that the company gives its authorized dealers a firm option (usually for a day) to buy shares at a price based on the previous day's closing. In a rising market the authorized dealers purchase stock from the company at a price based on the lower closings of the previous night, thereby acquiring shares for less than their true value at the time of acquisition, to the detriment of the present shareholders. This practice is aggravated when the dealers manage to sell back their shares immediately to the company at a profit to themselves, obviously at the expense of the trust and without risk. There can be no doubt that this represents an unwholesome condition, but Section 22(d) is not needed to eliminate it. It is already covered by Section 22(a), which is designed to eliminate riskless trading and dilution. Dilution with respect to street dealers presents no real problem. Nearly all sales agreements between authorized dealers and

principal underwriters forbid the former to sell shares at less than the current public offering price.

8. *The Real Basis for Section 22(d):*

It will be seen from the foregoing that if there are any "abuses" in the sale of trust shares, the street dealers cannot be blamed for them. One is impelled to the conclusion that the "reasons" advanced for enacting Section 22(d) have no foundation in fact. If the provision will achieve anything at all—and we think it was designed for this purpose—it will effectively hamper street dealers in dealing in trust shares, concentrate such transactions in the hands of authorized dealers and principal underwriters, and thus create a virtual monopoly. Instead of being protected and benefitted, the investor will be gravely prejudiced.

9. *Proposal.*

The street dealer performs a useful function in maintaining a close market in trust shares. The maintenance of such a market is decidedly to the benefit of the investor. The activities of the street dealer in this direction should not be hamstrung by legislation. It is submitted that the proposed form of Section 22(d) should be changed to read as follows:

> "(d) No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, *a broker*, a principal underwriter or the issuer, except at a current public offering price described in the prospectus: ***" (The words "a broker" have been added.)

EXHIBIT B

EXHIBIT B OF DEFENDANT BACHE & CO. ET AL. ATTACHED TO REPLY MEMORANDUM IN SUPPORT OF MOTIONS BY THE DEFENDANT DEALERS TO DISMISS THE COMPLAINTS, FILED JULY 20, 1973

Telephone JOurnal Square 2-4400

Cable Address "Accurate"

GOODBODY & CO.
formerly
ROBERT GOODBODY & Co.
Established 1891
921 Bergen Avenue, Jersey City, N. J.

MANAGERS
James F. Kennedy
Edward J. Wright

MAIN OFFICE
115 Broadway
New York, N.Y.

Members
New York Stock Exchange
New York Curb Exchange
Chicago Stock Exchange
Chicago Board of Trade
New York Cotton Exchange
and
Other Principal Exchanges

July 16, 1940

Mr. Wallace Fulton
Executive Director, N. A. S. D.
Washington, D. C.

Dear Mr. Fulton:

My attention has been called to a proposed amendment to the rules of Fair Practice of the N. A. S. D. It is also my understanding that this proposal emanates from the Investment Trust Security Dealers Association, an organization representing the sponsors of investment trust issues.

If this amendment is what I understand it to be an amendment such as this would eliminate all competitive bids or offers made in a free and open market and would serve one purpose only namely, of protecting syndicate houses against healthy competition. It has been unfair practice in the past such as this amendment, that has brought disfavor on the heads of all security brokers. A law to protect a chosen few who think they are sitting in the inner circle, but giving no

constructive thought to the millions of investors who have an interest in these securities. An amendment such as this will not give the investing public the protection they are entitled to. Healthy competition has always been the life blood of all business and by eliminating this you have one answer only but it is not the right answer. This amendment is a confession by the syndicate houses that if they can liquidate their competition they will have a closed field for themselves. The open trading done in all Investment Trust issues has at no time stopped syndicate houses from selling additional securities for in the past few years there have been millions of additional securities of this type sold to the investor.

Since this department has been active in trading these securities for many years, we would deeply appreciate being informed of this proposed amendment and whether or not the Board of Governors or any committee of the association has or is to hold hearings on the question of its adoption. If a hearing is to be held, we should like to know the date and place of such hearing.

Telephone JOurnal Square 2-4400

Cable Address "Accurate"

GOODBODY & CO.
formerly
ROBERT GOODBODY & Co.
Established 1891
921 Bergen Avenue, Jersey City, N. J.

Managers	Members
James F. Kennedy	New York Stock Exchange
Edward J. Wright	New York Curb Exhange
	Chicago Stock Exchange
	Chicago Board of Trade
Main Office	New York Cotton Exchange
115 Broadway	and
New York, N. Y.	Other Principal Exchanges

July 16, 1940

We presume that the association will afford an opportunity to dealers likely to be affected by any such amendment to study the proposal and to be heard before its adoption by the Board of Governors.

Yours very truly,

GOODBODY & CO.

GKS/M

July 19, 1940

Mr. G. K. Shields
Goodbody & Co.,
921 Bergen Avenue,
Jersey City, N. J.

Dear Mr. Shields:

I have referred your letter of July 16 to Mr. Henry Vance, Chairman of our Investment Trust Underwriters Committee, who will be very happy to discuss with you the proposed rules having to do with investment trust securities.

These rules are only in tentative form. They have not been presented to the Board and probably will not be considered by the Board at its meeting on July 22 and 23, but rather will be referred to a sub-committee of the Board for consideration.

You may be sure that if you have any further questions after discussing this matter with Mr. Vance, you will be given an opportunity to present your views before the subcommittee.

Very sincerely yours,

Wallace H. Fulton,
Executive Director.

LAURENCE M. MARKS & CO.
Investment Securities
49 Wall Street, New York
Tel. HAnover 2-9500

Members
New York Stock
Exchange

Cable Address
Rencemark, N.Y.

August 22, 1940.

Mr. Wallace J. Fulton, Director
National Association of Securities Dealers, Inc.
821 West 15th Street, N.W.
Washington, D. C.

Dear Wally:

For your information I attach a copy of a letter which I received today from Mr. Shields of Goodbody & Company.

With very kindest regards, I am,

Sincerely,

LMM:MLF

COPY

GOODBODY & CO.
Jersey City, N. J.

August 21, 1940

Mr. Lawrence M. Marks
Lawrence M. Marks & Co.
49 Wall Street
New York City

Dear Sir:

You are no doubt familiar with the text and history of the Wagner-Lea Bill to regulate investment companies which has just been passed by both Houses of Congress. We believe that this bill, which was drawn up with the assistance of a small committee of representatives of the underwriting houses, as a whole is an excellent bill. Due to the fact however that brokers and dealers had no representation, it has been possible to insert into this bill a paragraph which only protects the underwriting houses but is detrimentally harmful both to the investing public and to the street.

The joker is to be found in section 22 paragraph D, which paragraph we together with others have vigorously but unsuccessfully opposed in Washington. A memorandum prepared by us and our Associates and sent to every individual Senator explaining our objection is enclosed herewith.

We doubt that it has been generally realized that under this section it will be illegal for a broker to come into the independent street market and buy for a client any mutual trust shares, unless his client is charged the full published offering price established by the underwriter. In other words if the street is quoting Massachusetts Investors Trust 17¼-½ and the market published by Massachusetts Distributors is 17.25-18.55, any broker buying for account of a customer must buy the stock not below 18.55. His client is compelled to pay 18.55 plus commission or $1.05 more than he should.

We fully realize the work and expense incurred by the underwriters in creating trust shares. An investment trust issue however should not be confused with a limited bond

or stock issue sold through a syndicate of dealers. Trust issues are continuously offered and there is no question that the loading charge of 7½ of 8% should be levied upon any newly created shares, but we do not see why the same charge should be borne over and over again whenever shares created years ago are turned over and traded in a free and open market.

While the fight against this paragraph will undoubtedly continue with the hope of having this paragraph eventually amended, the underwriters committee of the N.A.S.D. has drawn up a similar proposal to be voluntarily adopted by the N.A.S.D. The Board of Governors is now considering the draft to be submitted to the members for a vote.

In the interest of re-establishing a free and open market in these securities when and if an amendment to the Wagner-Lea Bill can be put through we again vigorously oppose the passage of this rule by the N.A.S.D. which, by voluntary action along the lines of the disputed paragraph, would make any further Congressional action impossible.

Some time ago we wrote in this connection to Wallace H. Fulton, Executive Director of the N.A.S.D. He referred our letter to Mr. Vance, who he stated is working out these rules in the interest of the industry. Obviously Mr. Fulton and possibly the Board of Governors of the N.A.S.D. are not aware of the fact that Mr. Vance is not representing the industry as a whole but only a faction, the very faction which we believe is attempting, for selfish reasons, to restrict free and open trading.

We appeal to you as a member of the Board of Governors to give this matter your most considerate attention and voice your objection to this rule before the Board.

We urgently request that you will allow representatives of brokers and of the trading fraternity to express their views on this matter before any action is taken.

Yours very truly,

GOODBODY & CO.
S/ G. K. Shields
Manager of Investment Trust
Trading Department

GKS/M

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE GENERAL COUNSEL

August 9, 1973

Honorable Howard F. Corcoran
Judge, United States District Court
for the District of Columbia
United States Courthouse
Washington, D.C. 20001

Re: *United States* v. *NASD, et al.*, No. 338-73 (D.D.C., filed February 21, 1973) and related cases.

Dear Judge Corcoran:

This letter is in response to your invitation to the Commission to participate in the above referenced cases. First let me thank you for offering to us the opportunity to express our views in this matter.

The Commission is concerned that these antitrust actions may involve attacks on the rules of the National Association of Securities Dealers ("NASD") over which the Commission is granted exclusive original jurisdiction by Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. 78o-3, et seq. (the Maloney Act). If, in considering the defendants' present motions to dismiss, you determine that the rules of the NASD are the object of these antitrust actions, or, if the motions to dismiss are denied and the facts adduced at trial demonstrate that rules of the NASD are being attacked by the plaintiffs under the antitrust laws, then the Commission would likely wish to participate in these cases in order to protect its jurisdiction. As we read the plaintiffs' complaints, and briefs and affidavits in opposition to the motions to dismiss, however, the precise factual scope of their antitrust attack does not seem sufficiently developed to allow this Office to recommend to the Commission that it participate in these cases at this time.

We would like to assure you that these cases are being observed carefully by the Commission's staff in order to insure that we may promptly bring to your attention any

conflicts between the Commission's exclusive original jurisdiction under the Maloney Act and your jurisdiction under the antitrust laws. The Maloney Act was enacted to encourage the formation of self-regulatory organizations, *inter alia,* in order to avoid some of the expense of complete direct regulation of the over-the-counter markets, and to avoid involving the government in the establishment of ethical, as opposed to legal, business standards.[1] Congress contemplated that the Securities and Exchange Commission would "exercise appropriate supervision in the public interest"[2] over the activities of these self-regulatory organizations and further granted to the Commission "supplementary powers of direct regulation."[3] Accordingly, in order for an association of over-the-counter broker-dealers to be registered under the Maloney Act, the Commission has to find that the association's rules meet a number of standards specified in Section 15A(b), including that they are designed "to remove impediments to and perfect the mechanism of a free and open market; and are not designed to permit unfair discrimination between customers or issuers, or brokers or dealers . . . ," Section 15A-(b)(8). In the same manner, for a registered association to amend its rules, the Commission must find, under Section 15A(j), that the amendment is consistent with the standards of Section 15A(b). And Section 15A(k)(1) of the Act authorizes the Commission, "after appropriate notice and opportunity for hearing," to abrogate rules of a registered association, "if such abrogation is necessary or appropriate to assure fair dealing by the members of such association . . . [or] to protect investors or effectuate the purposes of this title."[4] Among the purposes of the title are the competitive considerations contained in Section 15A(b)(8). Finally, Section 15A(n) of the Maloney Act provides that:

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[1] Senate Committee on Banking and Currency, Regulation of Over-the-Counter Markets, S. Rep. No. 1455, 75th Cong., 3d Sess. 3-4 (1938).

[2] *Id.*

[3] *Id.*

[4] The Commission's authority under 15A(k)(1) extends to partial abrogation of a rule of a registered association insofar as the rule has been interpreted or applied by the association in a manner inconsistent with the purposes of the Maloney Act. *See* Securities and Exchange Commission, Securities Exchange Act Release No. 9632 (June 7, 1972).

"If any provision of [the Maloney Act] . . . is in conflict with any provision of any law of the United States in force on the date this section takes effect, the provisions of this section shall prevail."

The Maloney Act thus vests in the Securities and Exchange Commission broad regulatory authority over the rules of registered over-the-counter broker-dealer associations like the NASD, and provides for precise standards and procedures to be employed by the Commission in authorizing or reviewing those rules.

Silver v. *New York Stock Exchange,* 373 U.S. 341 (1963), is generally regarded as the leading case on the relationship between the Securities Exchange Act and the antitrust laws. That case, however, as the court pointed out, involved particular action by the New York Stock Exchange which was not subject to Commission review, and the court attached significance to that fact. For example, it said "Should review of exchange self regulation be provided through a vehicle other than the antitrust laws, a different case as to antitrust exemption would be presented. See note 12 *supra.*" (373 U.S. 341, at 360). Note 12, to which the court made reference, referred expressly to the Commission's jurisdiction under the Maloney Act and stated that were there such Commission jurisdiction in the *Silver* situation, "a different case would arise concerning exemption from the operation of laws designed to prevent anti-competitive activity, an issue we do not decide today." (373 U.S. 341, 358, n. 12). The present action may be that "different case" but, as we pointed out at the beginning of this letter, this will depend upon determinations concerning the relationship of this action to the rules of the NASD which have not as yet been made. In *Ricci* v. *Chicago Mercantile Exchange,* 409 U.S. 289, 302-303 n. 13 (1973), the Supreme Court recognized that where a regulatory act contains an express exemption from the operation of the antitrust laws, or where a regulatory agency is specifically directed to consider competitive factors in the exercise of its duties, it is necessary to conclude that Congress intended to exempt from the antitrust laws activity subject to the administrative agency's adjudicative or rule-making authority. If *United States* v. *NASD* and its related cases do in fact constitute attacks on matters which are within the Commission's supervisory jurisdic-

tion over NASD rules then the teaching of *Ricci* and the very structure of the Maloney Act require you to conclude that these cases cannot be maintained under the antitrust laws.[5]

Although we have determined not to participate in these cases—at this time—by the filing of an *amicus* brief, we will remain vitally interested in the case and the specific legal issues being raised. Your courtesy in offering us the opportunity to participate at this time, however, is greatly appreciated.

Sincerely,

Lawrence E. Nerheim
General Counsel

[5] The Commission's position in this regard is, of course, contrary to the decision in *Harwell* v. *Growth Programs, Inc.*, 451 F. 2d 240 (C.A. 5, 1971), *opinion modified and petition for rehearing denied*, 459 F. 2d 461 (C.A. 5) (per curiam), *certiorari denied*, 409 U.S. 876 (1972), where the Court concluded that a district court in a private antitrust suit may enjoin compliance with an NASD interpretation of one of its rules which the Commission had urged the NASD to promulgate. Aside from the fact that *Harwell* has the effect of reading out of the Maloney Act the procedures and standards established by the Act for approving and reviewing NASD rules, and the express antitrust exemption of Section 15A(n), it is worth noting that that opinion was decided before the Supreme Court explained in *Ricci* that a regulatory scheme like the Maloney Act precludes *de novo* antitrust actions.

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

August 20, 1973

Honorable Howard F. Corcoran
United States District Court
for the District of Columbia
Washington, D. C. 20001

Re: United States v. NASD, et al. (No. 338-73)

Dear Judge Corcoran:

This correspondence concerns the letter sent by Lawrence E. Nerheim, General Counsel of the Securities and Exchange Commission to you on August 9, 1973, declining on behalf of the Commission to participate in *United States* v. *NASD* and related cases.

Mr. Nerheim's letter raises the question of the relationship of the Government's case to the NASD's Rules. We would like to clarify any possible confusion on this issue. While the Government believes that, in an appropriate case, it would not be precluded by either the Maloney Act, 15 U.S.C. § 78o-3, *et seq.* or *Ricci* v. *Chicago Mercantile Exchange*, 409 U.S. 289 (1973), from challenging a specific NASD rule under the antitrust laws, the instant case does not pose this issue since it does not represent an attack upon NASD Rules as such. Count I of the complaint is aimed at an over-all course of conduct engaged in by the NASD and its members going beyond the NASD's rule making authority. An example of the type of conduct we are challenging is illustrated by GX 14 through GX 19, attached to our Memorandum of Points and Authorities In Opposition to Defendants' Motions to Dismiss.

It is my present view that, should the Government prevail, it could obtain effective relief without the abrogation or alteration of any existing NASD Rules.

Sincerely yours,

BRUCE B. WILSON
Acting Assistant Attorney General
Antitrust Division

By: Daniel R. Hunter
Attorney, Department of Justice

cc: All counsel in *United States* v.
NASD, et al.

(Title Omitted in Printing)

Friday, August 3, 1973
Washington, D.C.

The above-entitled matters came on for hearing before The Honorable HOWARD F. CORCORAN, United States District Judge, at 9:30 a.m.

APPEARANCES:

PHILLIP VERVEER, Esq. and
CARL SCHWARZ, Esq.
For the Securities and Exchange Commission

DAVID BERGER, Esq.
For Plaintiffs in CA 426-73

OWEN JOHNSON, JR., Esq.
For Broker-Dealer defendants

WILLIAM MEAGHER, Esq. and
DANIEL LEVIN, Esq.
For the Fidelity Fund

JOSEPH LEVIN, Esq.
For NASD

ROBERT JENSEN, Esq.
For Wellington Management Company

EDGAR BRENNER, Esq.
For Investment Company Institute

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[43] But, as I say, we don't think you have to reach that point.

THE COURT: So far nobody has volunteered anything from the SEC. But on the other hand, they haven't been called upon to do so, either. I haven't had their views on anything.

All right. Thank you very much.
MR. JENSEN: Thank you, Your Honor.
THE COURT: Mr. Hunter.
MR. HUNTER: Daniel Hunter for the Government.

I will briefly touch on Section 22(d). Mr. Phil Verveer,

my colleague, will discuss Section 22(f). Carl Schwarz will then discuss both primary jurisdiction and the horizontal NASD conspiracy, and Mr. Berger will conclude the presentation.

The first thing I would like to say, Your Honor, is that we are not asking for repeal of Section 22(d), contrary to what you might have thought from the last speaker, nor if Congress in six months from now overturns the long-standing SEC interpretation, that's fine; we can do nothing about it.

What we are asking for here is the application of a principle that we think is fairly clear. And that is that statutes in derogation of the Anti-trust Laws must be construed strictly. The Supreme Court has called the Anti-trust Laws the Magna Charta of our free enterprise system in fundamental

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[57] MR. SCHWARZ: Good morning, Your Honor. I am Carl Schwarz, appearing for the plaintiff in the Hadad case.

I would like to make four points in my alotted time.

First, each of the complaints alleges a broad industry-wide horizontal conspiracy which goes beyond the narrow immunity arguments made under 22(f) and 22(d) by the defendants.

Secondly, although we could dispose of Mr. Levin's entire argument by pointing out that nowhere does our complaint challenge a rule of the NASD, and we understand that neither the Government complaint, and presumably the grass complaint, either, are challenges of such rules directly, as well, I will show that the Maloney Act does not entitle the defendants to anti-trust immunity for such comprehensive anti-competitive agreements, because the NASD has not even attempted to follow the methods prescribed by the statute for obtaining such immunity, and the Maloney Act cannot immunize this conspiracy, in any event.

The third point is that the 1940 Act does not entitle defendants to anti-trust immunity, the so-called pervasive immunity argument, because it does not grant to the SEC discretionary power to regulate the distribution of mutual funds in the public interest, nor does it give the SEC the power to grant anti-trust immunity to cartel agreements entered into by the industry.

[Mr. Schwarz, p. 60]

[60] I would like to emphasize that 22(b) said primary distribution. It is reasonable to assume that what Congress expressly denied in 22(b), that is, power over the secondary market, could not be granted in 22(d) as the defendants argue.

I have described the Act here to emphasize that in order for the defendants to even make a colorable claim of immunity under the Maloney Act, they must show these things: First, that the plaintiffs have challenged a result of the NASD. Second, that the challenged rule was submitted to and not disapproved by the SEC, as required by the Act, which was the situation, by the way, in the Harwell case. And, three, that the rule was consistent with the specific enumerated objectives of the Act, or, as Silver, Thiel Ricci and Harwell, all cases quoted in our briefs, have stated, that whether the rule, this amounts to, those cases have stated that the rule was necessary to make the Act work.

The defendants can't even get passed No. 1. Neither we nor any of the other complaints challenge any NASD rule, no matter how much defendants would try to make it so.

What we do challenge is the informal, unofficial secret activity of the NASD designed to suffocate the secondary mutual fund market typified by but not limited to the 1958 episode disclosed by the Government brief. Defendants apparently can't bring themselves to face this issue squarely because it * * * [75] kind of conspiratorial behavior in order to make the regulatory act work. There is nothing in this record, and we submit that on the basis of the complaints that the motion to dismiss should be denied.

Thank you, Your Honor.

MR. BRENNER: Your Honor, my name is Edgar H. Brenner. I am counsel for the Investment Company Institute, one of the defendants in the Haddad civil case, not in the Government action.

I would like to hit, in rebuttal, just a few of what I regard as the particularly significant points that came up in the course of the argument by plaintiffs' counsel.

Your Honor probably noted that a remarkable and quite significant concession was made by Mr. Schwarz in which he stated that no reliance was being put in the plaintiffs' cases on NASD rules. Whereas, in the Government com-

plaint when this action was filed says specifically, under Count 2, paragraph 16 and 17, that the defendants combined and conspired with members of the NASD to establish and maintain rules which inhibit the development of a secondary market.

And, indeed, in the Government's brief, at page 64 it says specifically that the NASD established and maintained rules which inhibited the development of a secondary dealer market.

Now, as the argument of Mr. Levin pointed out, the [76] anti-trust immunity afforded to NASD action is considerable. And NASD action must be considered in terms of this comprehensive regulatory pattern which involves not just the SEC but also the NASD.

It would appear as a result of the statements of Mr. Schwarz that the plaintiffs are, in effect, abandoning a major part of the action as initially conceived.

Secondly, I think it's worthwhile to point out what has happened to the definition of the word "dealer." A new and novel, and I would suggest not very pervasive, definition was advanced dealing with the possibility of regarding people in a separate status when they are home or not working, in trying to fashion some relevance or that idea of concept to the definition of "dealer" in the Act.

We start with the proposition that under Section 22 and as a result of it, no person who is defined as a dealer who is a dealer may sell redeemable shares if they are in the process of distribution at other than the prospectus price if he is selling to the public.

The definition of "dealer" is not one that lets people easily evade that status. A dealer is a person who regularly engages in buying securities for his own account, with certain exclusions for people like banks or insurance companies. But a dealer is a person regularly engaged in the business of buying securities for his account.

* * * * *

[Daniel Levin, p. 83]

Secondly, they are on file with the SEC in the registration statement.

[83] So we are being put in the unique position of saying we are either violating state law or, in fact, we agree with the plaintiff's interpretation of 22(f), because we put these provisions in our dealer agreements and because we put them in various registration statements, there is no oc-

casion for us to put them on the certificate itself and we violate no state law by not doing so.

That is all I have, Your Honor. Thank you.

THE COURT: Mr. Schwarz, you wanted to say something further?

MR. SCHWARZ: No, Your Honor.

MR. BERGER: I just wanted to add one point in answer to the previous speaker, Your Honor. We don't complain that the defendants violated the NASD rules. We complain that they complied with the NASD rules, and that these rules aided and abetted in the consumation of the conspiracy which violated the anti-trust law.

MR. HUNTER: Just one thing in conclusion: That is, that the idea that you can just under the doctrine of primary jurisdiction secure the expertise of the SEC. That is not primary jurisdiction. We have no quarrel with seeking the expertise of the SEC by inviting them to file briefs or inviting them to file whatever they want to in the case. You [84] can have the benefit of their expertise that way.

Primary jurisdiction is a different animal. It means just what it says: jurisdiction. Does the SEC have jurisdiction over what is charged in this complaint? We maintain that they don't. We maintain that this is an anti-trust case. The SEC has decided some subsidiary issues under the Investment Company Act, but they don't have jurisdiction over the allegations of this complaint, and, therefore, the case should not be referred to them under the doctrine of primary jurisdiction.

As I say, if Your Honor desires to have them file something, we would perfectly happy to have them do so.

MR. SCHWARZ: Your Honor, if I may make another point now.

The point just raised by Mr. Hunter, I think it might be illuminating to the Court to read a one-sentence quotation from the RCA case decided by the Supreme Court, 358 U. S. page 346, where it said: "Thus, when questions arose as to the applicability of the primary jurisdiction doctrine," —I inserted that because that is what the Court was talking about—"to transactions allegedly violative of the anti-trust laws, particularly involving fully regulated industries whose members were forced to charge only reasonable rates approved by the appropriate commission, this Court found the doctrine applicable," citing four or five cases including

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(Title Omitted in Printing)

MEMORANDUM OPINION

I

THE NATURE OF THE CASE

Filed, Dec. 14, 1973
James F. Davey, Clerk

Judge Corcoran

The above-captioned lawsuits are civil actions alleging violations of the federal antitrust laws in connection with the distribution of securities of open-end management investment companies ("mutual funds").[1] The operations of such companies are governed generally by the Investment Company Act of 1940 [2] (the 1940 Act).

In Civil Action No. 2454-72, plaintiff Haddad purports to sue on behalf of a class and subclass of mutual fund investors. Haddad alleges violations of the antitrust laws [Sherman Act, Sections 1-3, 15 U.S.C. §§ 1-3)] and the securities laws [Securities Exchange Act of 1934, Section 10(b), 15 U.S.C. § 78j(b); Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5 (1972)]. The antitrust claim is that the various defendants, including underwriters of and dealers in mutual fund shares and unnamed co-conspirators have agreed, combined and conspired to inhibit, or to refuse to participate in, transactions as agents or brokers in mutual fund shares at prices below the applicable public offering prices established in the prospectuses of such mutual funds and have placed unreasonable restraints upon the transferability of such shares. In essence, the securities claim is that there is a failure to disclose the alleged antitrust violations and that such failure constitutes an independent violation of the securities laws. Haddad alleges damages to her and her purported class of undetermined millions of dollars. Haddad's antitrust claim requests treble dam-

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[1] By definition an open-end management investment company is any issuer which (1) "is or holds itself out as being primarily . . . in the business of investing, reinvesting, or trading in securities" (15 U.S.C. § 80a-3); (2) is not a face-amount certificate company or a unit investment trust (15 U.S.C. § 80a-4); and (3) is "offering for sale or has outstanding any redeemable security of which it is the issuer" (15 U.S.C. § 80a-5).

[2] 15 U.S.C. § 80a-1, *et seq.* (1970).

ages and injunctive relief. The securities claim requests actual damages, punitive damages, and injunctive relief.

Civil Action No. 338-73 is brought by the Antitrust Division of the U.S. Department of Justice. The complaint alleges violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The gist of the complaint is that defendants National Association of Securities Dealers (NASD),[3] funds and dealers have participated in agreements, combinations, and conspiracies, the effect of which has been to inhibit a "market" for "brokerage transactions" and thereby to suppress the growth of a "secondary market in mutual fund securities," and to cause the public to pay artificial and non-competitive sales loads for mutual fund shares. The government complaint seeks only prospective, injunctive relief.

Civil Action No. 426-73, the Gross case, is another private antitrust suit and purported class action which substantially duplicates the government allegations in No. 338-73. This action seeks injunctive relief and treble damages for injury to the purported plaintiff class over an indeterminate past period.[4]

The individual defendants in each case are principal underwriters [5] or broker-dealers [6] in mutual fund shares.[7]

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[3] The NASD, incorporated in Delaware on July 18, 1939, became registered under the Maloney Act, § 15A of the Securities Exchange Act of 1934, 15 U.S.C. § 78o-3, on August 7, 1939. National Association of Securities Dealers, Inc., 5 S.E.C. 627 (1939). It is the only association ever to have applied for or been granted registration under the Maloney Act. Its membership is comprised of some 4400 broker-dealers and principal underwriters.

[4] Since the filing of the above-captioned actions, some fifty private suits, purporting to be class actions under *Fed. R. Civ P.* 23, have been filed in various United States District Courts around the country. These cases have been transferred to this district by the Judicial Panel on Multidistrict Litigation, and are collectively cited as: In Re Mutual Fund Sales Antitrust Litigation, Civil Action No. Misc. 103-73. Pre-trial discovery and other activity in all cases (including the instant cases) has been stayed pending disposition of the motions to dismiss under consideration here.

The Court has also reserved judgment in all alleged class suits on the question of whether the actions may be maintained as class actions under *Fed. R. Civ. P.* 23.

[5] A principal underwriter is defined by the 1940 Act as

> any underwriter who as principal purchases from (an open-end investment) company, or pursuant to contract has the right . . . from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. 15 U.S.C. § 80a-2(a)(29).

[6] A broker is defined by the 1940 Act as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies." 15 U.S.C. § 80a-2(a)(6). A dealer is defined as "any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business." 15 U.S.C. § 80a-2(a)(11).

[7] The identities of all the parties in each of the above-captioned cases are reflected in the accompanying Orders.

Additionally the NASD is named as a defendant in all three cases. In each case the defendants have moved to dismiss the complaints, pursuant to *Fed. R. Civ. P.* 12(b) on the grounds:

(a) That as a matter of law, Section 22(d) of the Investment Company Act of 1940, 15 U.S.C. § 80a-22(d), establishes a system of fixed, retail price maintenance in the distribution of investment company securities which is totally inconsistent with antitrust concepts and which accordingly creates, as Congress clearly intended, an exemption and immunity from antitrust liability for the defendant dealers' conduct in maintaining the fixed, public offering price of such securities;

(b) That as a matter of law, Section 22(f) of the Investment Company Act of 1940, 15 U.S.C. § 80a-22(f), sanctions contractual restrictions on the transferability or negotiability of investment company securities, subject to supervision of the Securities and Exchange Commission (SEC), which restrictions are totally inconsistent with antitrust concepts and which restrictions, therefore, as incorporated in the defendant dealers' publicly-filed investment company sales agreements, are exempt and immune from antitrust liability; and

(c) That by the Investment Company Act of 1940, Congress subjected the acts and practices of the defendant dealers in the distribution of investment company securities to continuous and pervasive regulation by the SEC as well as NASD acting under the SEC's supervision; and, accord-

ingly, the SEC has exclusive jurisdiction to regulate those acts and practices, and such acts and practices are exempt and immune from the claims herein alleged as violations of the Federal antitrust laws.

The motions were consolidated for argument.[8]

II

THE REGULATION OF MUTUAL FUNDS

The dispute can only be determined ultimately by an analysis of the several subsections of Section 22 of the 1940 Act and an antitrust exemption purportedly given by Section 15A(n) of the Securities and Exchange Act of 1934 (the Maloney Act) [15 U.S.C. 78o-3(n)]. Before reaching that point, however, it would seem appropriate to view the overall regulatory scheme imposed by Congress on investment companies through the 1940 Act.

It became apparent to the Congress in 1935 that the disclosure and antifraud provisions of the Securities Act of 1933 (the 1933 Act) and the Securities Exchange Act of 1934 (the 1934 Act) were not adequate for the regulation of investment companies. Accordingly, it directed the SEC to make a comprehensive study of the investment company industry with a view to proposing corrective legislation. The SEC did so[9] producing a draft "Investment Trust Bill" which was the subject of hearings conducted by a Senate subcommittee.[10] Representatives of the investment company industry were invited to participate in the hearings. Ultimately a compromise bill emerged which finally

[8] In opposition to the motions to dismiss all the plaintiffs also rely on the proposition that a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiffs are unable to prove any set of facts which would entitle them to relief. Neither the defendants nor this Court have any argument with that general proposition, but, as the issues are drawn here for purposes of these motions to dismiss, they are strictly legal ones as to which the facts as alleged in the complaints or otherwise are not relevant.

[9] *Report of the SEC, Investment Trusts and Investment Companies, Part Three, Abuses and Deficiencies in the Organization and Operation of Investment Companies, H.R. Doc. No.* 279, 76th Cong., 1st Sess. (1939) (hereinafter cited as *Investment Trust Study of 1940*).

[10] *Hearings on S. 3580 Before a Subcomm. of Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. (1940) (hereinafter cited as *1940 Senate Hearings*).

became law as the Investment Company Act of 1940, 15 U.S.C. § 80a-1 *et seq.*[11]

The 1940 Act brought many investment companies within the disclosure requirements of the federal securities laws for the first time. It tightened up those requirements and tailored them to prohibit certain undesirable practices in the investment company industry. Presently, pursuant to the 1940 Act investment companies must register themselves (§§ 7 and 8) and their shares [§ 24(a)] with the SEC, update periodically their filings with quarterly and annual reports [§§ 30(a)-(c)], and submit prospectuses and sales literature to the SEC [§ 24(b)]. Companies must issue to their shareholders, at least semi-annually, financial reports containing specific types of information [§ 30(d)].

The 1940 Act also imposes detailed restrictions upon investment company structure, conduct, financial policies, and dealings with and by affiliates.[12]

[11] That Act included § 22(d), one of the sections in controversy in this case, discussed *infra*. Section 22(d) prohibited sales of investment company shares to the public at any price other than the fixed public offering price.

[12] The Act delimits permissible methods for selecting directors of investment companies (and trustees in the case of investment trusts) (§ 16), sets out qualifications for securities custodians [§ 17(i)] and methods of safekeeping securities [§ 17(g)], and prohibits indemnification for official conduct [§§ 17(h) and (i)]. Certain persons guilty of prior malfeasance are barred altogether from affiliating with investment companies, advisers, custodians, and principal underwriters (§ 9). Others who commit misconduct or abuse their positions of trust can be enjoined (§ 36). Misappropriation of company funds is made a federal crime (§ 37).

The Act also sets out minimum capitalization requirements for the companies (§§ 14 and 18). It requires a majority shareholder vote for changes in a company's open-end or closed-end nature, its diversification, its capacity to borrow money, issue senior securities, underwrite others' securities, purchase and sell real estate and commodities, or make loans, its investment policies, and its fundamental business (§ 13). Certain dividend distributions are barred unless timely disclosed to the shareholders (§ 19). Investment companies are barred from participating in certain types of securities transactions [§ 12(a)] and from making certain loans (§ 21). Some proxy solicitations are barred [§ 20(a)] and some exchanges need prior SEC approval (§ 11). Reorganization plans must be submitted to the SEC, which can render a negative advisory report and seek an injunction with respect to such reorganizations (§ 25). Voting trusts and cross or circular ownership patterns are barred (§ 35). Accountants must meet certain criteria, be selected in a particular fashion, and perform certain functions (§ 32). The regulated companies must keep and refrain from destroying certain books and records (§§ 31 and 34). Unit investment trusts (§ 26) and face amount certificate companies (§§ 28-29) are given special regulatory treatment. The Act curtails the pyramiding of mutual funds [§§ 12(d)-(g)]. Unless it is

In 1938 (prior to the enactment of the 1940 Act), the Congress had amended the 1934 Act through the passage of the so-called "Maloney Act," 15 U.S.C. § 78o-3. The Maloney Act provided for the registration with the SEC of a national securities association with rule-making power upon the finding by the SEC that:

> the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to provide safeguards against unreasonable profits or unreasonable rates of commissions or other charges, and, in general, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market; and are not designed to permit unfair discrimination between customers or issuers, or brokers or dealers, to fix minimum profits, to impose any schedule of prices, or to impose any schedule or fix minimum rates of commissions, allowances, discounts, or other charges.[13]

When Congress enacted the Maloney Act in 1938 it specifically provided:

> If any provision of this section is in conflict with any provision of any law of the United States in force on June 25, 1938, the provision of this section shall prevail. 15 U.S.C. § 78o-3(n).

The defendant NASD is the only securities association registered with the SEC under the Maloney Act.

By § 22(a) of the 1940 Act, Congress gave the NASD, as a registered national securities association, the power to promulgate rules setting the minimum price at which its members may buy redeemable fund shares from a fund, the maximum price at which its members may resell to or redeem with a fund, and the minimum period which must elapse after sale before a member may resell to or redeem

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itself the principal underwriter, no investment company may acquire shares of another company whose principal underwriter is related to the first company [§ 10(f)]. At least 40% of the company's board must consist of independent directors (§ 10). Advisory contracts must first be approved by a majority of directors unaffiliated with the adviser or by a majority of shareholders [§ 15(c)]. Investment company transactions conducted by or with affiliated persons are prohibited in some cases and narrowly circumscribed in others (§ 17).

[13] § 15A(b)(8), 15 U.S.C. § 78o-3(b)(8).

with a fund. The SEC can exercise its overall supervisory power to promulgate rules superseding NASD's rules on sale, redemption and repurchase prices, holding periods, and sales loads [§ 22(c) 1940 Act].

Section 22(b)(1) of the 1940 Act empowers the NASD to adopt rules prohibiting members from charging "excessive" sales loads, provided that such rules "allow for reasonable compensation for sales personnel, broker-dealers, and underwriters."[14] In so doing the NASD is expressly freed from a provision[15] in the Maloney Act which had prohibited it from issuing rules designed to impede "a free and open market," "fix minimum profits," "impose any schedule of prices," or "impose any schedule or fix minimum rates of commissions, allowances, discounts, or other charges." Section 22(b)(3) of the 1940 Act, added in 1970, authorizes the SEC to alter and supplement the NASD's Section 22(b)(1) rules.[16] And in 1970, Congress added Section 22(b)(4) to the 1940 Act to the effect:

> If any provision of this subsection is in conflict with any provision of any law of the United States in effect on December 14, 1970, the provisions of this subsection shall prevail. 15 U.S.C. § 80a-22(b)(4).

An investment company, its principal underwriter, and its dealers are prohibited from selling redeemable securities for distribution to the public except at a current public offering price described in the prospectus [§ 22(d)]. Dealers and principal underwriters may, however, sell such securities to other dealers, the principal underwriter or the fund at other than a public offering price. (*Id.*)

An investment company may restrict the transferability and negotiability of its shares, but only insofar as that is

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[14] Before 1970, then-Section 22(b) authorized the NASD to issue rules barring "unconscionable" and "grossly excessive" sales loads, and then-Section 22(c) empowered the SEC to issue superseding rules for both NASD members and non-members.

[15] § 15A(b)(8), 15 U.S.C. § 78o-3(b)(8).

[16] The SEC may also grant qualified exemptions from NASD rules for "smaller companies" [§ 22(b)(1)]. Section 22(b)(2), another 1970 addition, gives the SEC the same rate-fixing powers over non-NASD broker-dealers as Section 22(b)(1) gives the NASD over its members. An underwriter whose shares are distributed by non-members of NASD, however, may elect to have its shares sold under the NASD rather than the SEC sales load rule. [§ 22(b)(2)].

done in conformity with the company's registration statement and not in contravention of SEC rules [§ 22(f)].[17]

By rules and regulations upon its own motion and by order upon application, the Commission may conditionally or unconditionally exempt persons, securities, or transactions, or classes thereof, from any provision in the Act or any rule or regulation thereunder, to the extent such exemption is in the public interest and not inconsistent with investor protection and the Act's purposes [§ 6(c)].[18]

Finally, no person may be held liable for any act done in conformity with an SEC rule, regulation, or order which is later invalidated [§ 38(c)].

Since 1940, the SEC has actively regulated the pricing and distribution of mutual fund shares. The Commission has promulgated a rule[19] for calculating fund share prices. It has promulgated another rule[20] allowing discount sales to certain groups and individuals and has periodically proposed[21] and adopted[22] amendments to this rule. It re-

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[17] The 1940 Act contains other provisions with respect to distribution. Redemption privileges may not be suspended or postponed for more than seven days after tender except during certain exceptional circumstances as defined by the SEC [§ 22(e)]. A fund may not issue shares for services or property other than cash or securities except as a dividend or shareholder distribution or in a reorganization [§ 22(g)]. Thus watering of shares is prevented.
Investment companies issuing periodic payment plan certificates may charge no more than a 9% sales load, nor deduct more than 50% of that load from the first year's payments, nor deduct disproportionate amounts, nor allow periodic payments of less than certain small amounts, nor make proceeds subject to management or other fees which exceed the amount the Commission prescribes as reasonable (§ 27). 1970 amendments added refund requirements and empowered the SEC to make rules with respect to reserves. (*Id.*)
Close-end funds are specially regulated with respect to watering and repurchase prices (§ 23).

[18] Baum v. Investors Diversified Services, 286 F. Supp. 914, 921 (N.D. Ill. 1968), *aff'd*, 409 F.2d 872 (7th Cir. 1969).

[19] Rule 22c-1, 17 C.F.R. § 270.22c-1, adopted in Investment Co. Act Release No. 5519 (1969), CCH *Fed. Sec. L. Rep.* '67-'69 Decisions ¶ 77,616.

[20] Rule 22d-1, 17 C.F.R. § 270.22d-1, adopted in Investment Co. Act Release No. 2798 (1958).

[21] Investment Co. Act Release No. 5507 (1968), in CCH *Fed. Sec. L. Rep.* '67-'69 Decisions ¶ 77,609; Investment Co. Act Release No. 6069 (1970) in CCH *Fed. Sec. L. Rep.* '69-'70 Decisions ¶ 77,826 and Investment Co. Act Release No. 7571 (1972) in CCH *Fed. Sec. L. Rep.* '72-'73 Decision ¶ 79,148.

[22] Investment Co. Act Release No. 6347 (1971), in CCH *Fed. Sec. L. Rep.* '70-'71 Decisions ¶ 77,953.

cently proposed a third rule[23] relating to no-load exchange privileges for fund shareholders who wish to switch to other load funds. The Commission has entertained a wide variety of applications for exemption from these rules and the relevant statutory sections and has granted some of these applications.[24] SEC administrative proceedings have barred both underpricing and overpricing of fund shares.[25]

The SEC has approved NASD Rule 26 which regulates in great detail the distribution, redemption, and repurchase of mutual fund shares.[26] The rule[27] says, *inter alia,* that principal underwriters must require their dealers to sign selling agreements containing certain restrictive provisions, that sales loads may not be "unfair," that the public offering price must be calculated in a particular fashion, that dealers and underwriters may not withhold customers orders or accumulate inventories, that certain conditional orders are barred, that the fund may not redeem at prices above net asset value, that sales loads must be refunded if the purchasers redeem soon after purchase, that fund shares may not be purchased at prices lower than the fund's next-quoted bid, and that non-contract dealers may not sell their shares back to the fund unless they are record owners of the shares. The SEC has supervised NASD enforcement

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[23] Rule 22d-2, proposed in Investment Co. Act Release No. 7555 (1972), CCH *Fed. Sec. L. Rep.* '72-'73 Decisions ¶ 79,132.

[24] See the list of more than 100 such applications in 4 CCH *Fed. Sec. L. Rep.* at p. 68,751 *et seq.* The Commission staff has issued an abundance of letters in response to "no action" requests with respect to these rules and the basic statutory provisions. From 1971 through March 21, 1973, there were 49 such letters listed in 4 CCH *Fed. Sec. L. Rep.* at pp. 63,134; 63,789; and 63,894.

[25] *See, e.g., Spiro Sideris,* Exchange Act Release No. 8816 (1970) (underpricing); *Russell L. Irish,* Exchange Act Release No. 7687 (1965), CCH *Fed. Sec. L. Rep.* '64-'66 Decisions ¶ 77,274 (overpricing). The Commission has also sought to regulate excessive "indirect" compensation to fund dealers. *E.g.,* SEC approval of new NASD Rules of Fair Practice, Section 26(k), which bars members from selling certain investment companies' shares in such a way that the companies will reciprocate with portfolio brokerage commissions, and conversely, Exchange Act Release No. 10147 (May 14, 1973), 5 *Fed. Sec. L. Rep.* ¶ 79,372.

[26] *Proposed Amendment to the Rules of Fair Practice of National Ass'n of Securities Dealers, Inc.,* 9 SEC 38 (1941).

[27] NASD Rules of Fair Practice, Article III, Section 26 in CCH NASD Manual ¶ 2176.

of this rule and reviewed NASD enforcement proceedings.[28]

For more than three decades, since the enactment of the 1940 Act, the agreements between dealers and principal underwriters, and between principal underwriters and mutual funds, have been filed with the SEC. The agreements are filed under both the 1933 Act and the 1940 Act.[29] The Investment Trust Study of 1940 described such agreements in detail.[30] The 1940 Act specifically calls for written contracts between funds and their principal underwriter [§ 15(b)]. As noted above, the Commission has approved a NASD rule which requires dealer-underwriter agreements; and Commission decisions have frequently turned on particular provisions of the dealer-underwriter agreements.[31]

III

THE OPERATION OF A MUTUAL FUND: RESALE PRICE MAINTENANCE

We look briefly at the manner in which a typical mutual fund operates within the foregoing framework.[32]

A mutual fund is an investment company which invests in the securities of other corporations and issues and has outstanding common stock representing an interest in the assets of the fund. The owner of the stock of the fund is entitled, on demand, to receive from the fund his proportionate share of the market value of the fund's net assets. To insure that the fund has sufficient cash or liquid assets on hand to meet current redemptions, the fund offers its common stock continuously. The offering price per share consists of the "net asset value" per share, computed daily,

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[28] *See* note 25 *supra.*

[29] *See* Part IV *infra.*

[30] *See* note 47 *infra* and accompanying text.

[31] *See, e.g., Mutual Funds Advisory, Inc.*, Investment Co. Act Release No. 6932 (Jan. 12, 1972); *First Multifund of America, Inc.*, Investment Co. Act Release No. 6700 (1971), CCH *Fed. Sec. L. Rep.* '70-'71 Decision ¶ 78,209 at p. 80,602; *Russell L. Irish*, Exchange Act Release No. 7687 (1965), CCH *Fed. Sec. L. Rep.* '64-'66 Decisions ¶ 77,274 at 82, 431 n.13.

[32] *See generally Investment Trust Study of 1940; Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No.* 2337, 89th Cong., 2d Sess. (1966) (hereinafter cited as *Public Policy Report*).

plus a sales charge or "load." The viability of a fund thus depends upon a distribution system which will effect continuous sales at prices which will support current redemption demands.

The primary distribution of the shares of a fund is controlled for the most part by § 22(d) of the 1940 Act and follows a basic pattern throughout the industry, *i.e.* (1) a fund enters into a contract with a principal underwriter who has the exclusive right to purchase the shares from the fund; (2) the principal underwriter acts only as a wholesaler supplying shares to retail dealers; (3) the retail dealers, who sell the shares to the investing public, are bound by contracts, commonly known as uniform sales agreements, with the principal underwriter which require that those dealers shall not sell at other than the public offering price, thus insuring that the price of the fund shares will not be the subject of competition among sellers of shares in the same fund; (4) the sales charge or "load" (which usually amounts to 7.5% to 8.5% above net asset value) is split between the underwriter and the dealer making the sale while the fund receives the net asset value component of the public offering price; and (5) when the shares are redeemed by the fund, as they must be upon demand, the redemption price is the net asset value prevailing at the time of redemption.

It is obvious from the foregoing outline of marketing procedures that the sale and distribution of mutual fund shares is accomplished through a retail price maintenance system which is patently repugnant to the free and open competition requirements of the Sherman Act. This price maintenance scheme, however, does not operate in a vacuum. Rather, it is expressly immunized from the otherwise applicable antitrust laws by virtue of the provisions of the 1940 Act and the Maloney Act. As the SEC recently reported to Congress, "Section 22(d) is an exception to the usual congressional policy, expressed in the antitrust laws, against price fixing.[33]

It has been authoritatively recognized that the Maloney

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[33] *Public Policy Report* 218-19. *See Report of the Staff of the Securities and Exchange Commission on the Potential Impact of a Repeal of Section 22(d) of the Investment Company Act of 1940* pt. I, at 1 (November 10, 1972) [hereinafter cited as *SEC Staff Report on Repeal of § 22(d)*], CCH *Fed. Sec. L. Rep.* No. 450 (Nov. 15, 1972) pt. II, at A-1.

Act, superimposed upon the regulatory scheme of the 1940 Act, provides a limited immunity for participants in the primary distribution system of mutual fund shares under SEC-approved NASD rules. That exemption [34] was noted by Mr. Justice Frankfurter in his dissenting opinion in *International Association of Machinists v. Street*, 367 U.S. 740, 809-10 n.16 (1961):

> The Maloney Act of 1938 added § 15A to the Securities Exchange Act of 1934. 52 Stat. 1070, 15 U.S.C. § 78o-3. In order to be registered, a number of statutory standards must be met. The statute specifically requires that an association's rules provide for democratic representation of the membership and that dues be equitably allocated. See § 15A(b)(5) and (6). Only one association, the National Association of Securities Dealers, Inc., has ever applied for or been granted registration. NASD membership comprises roughly three-quarters of all brokers and dealers registered with the Securities and Exchange Commission. Loss, Securities Regulation 766-67 (1951, Supp. 1955). Sections 15A(i) and (n) of the Act authorize the NASD to formulate rules which stipulate that members shall refuse to deal with nonmembers with immunity from the antitrust laws. See S. Rep. No. 1455, 75th Cong., 3d Sess. 8-9 (1938); Loss, *op. cit., supra*, 769-770. The Commission has stated that it is "virtually impossible for a dealer who is not a member of the NASD to participate in a distribution of important size." *National Association of Securities Dealers, Inc.*, 19 S.E.C. 424, 441.

Again, in *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 227 n.60 (1940), Mr. Justice Douglas stated:

> It should be noted in this connection that the typical method adopted by Congress when it has lifted the ban of the Sherman Act is the scrutiny and approval of designated public representatives. Under the N.I.R.A. this could be done through the code machinery with the approval of the President as provided in §§ 3(a) and 5, *supra* note 18. Under § 407(8) of the Transportation Act

[34] *See also* the exemption from the antitrust laws provided by § 22(b)(4):

> If any provision of this subsection is in conflict with any provision of any law of the United States in effect on December 14, 1970, the provisions of this subsection shall prevail. 15 U.S.C. § 80a-22(b)(4).

> of 1920, [41 Stat. 482; 49 U.S.C. § 5(8)], carriers, including certain express companies, which were consolidated pursuant to any order of the Interstate Commerce Commission were relieved from the operation of the antitrust laws. *And see the Maloney Act (§ 15A of the Securities Exchange Act of 1934; 52 Stat. 1070) providing for the formation of associations of brokers and dealers with the approval of the Securities and Exchange Commission and establishing continuous supervision by the Commission over specified activities of such associations. . . .* (Emphasis added.)

The plaintiffs recognize a limited antitrust immunity accorded to the primary distribution system. The gravamen of their complaints, however, is that the defendants have conspired to use the primary distribution system to foreclose the development of a secondary market in mutual fund shares. This is allegedly accomplished through the use of the uniform sales agreements mentioned above, which even after the primary distribution of the shares, set the price at which the shares shall thereafter be sold, thus precluding the dealers from selling shares as brokers in a brokerage market or as dealers in a secondary dealer market in which marketplace conditions and arms-length bargaining would be the price-setting factors. The plaintiffs insist that Congress, while allowing the primary market to flourish with benefit of antitrust immunity, did not intend to foreclose secondary market growth, but that such secondary markets are in fact being discouraged and suppressed by certain NASD rules and the restrictive provisions contained in the industry-wide uniform sales agreements between principal underwriters and dealers.

IV

SECTION 22, 1940 ACT

The fact that a secondary market is to all intents and purposes nonexistent might seem to substantiate the plaintiffs' claims. However, the position of the plaintiffs fails to take into account that the creation and maintenance of a free and open secondary market would be totally inconsistent with and might destroy the primary marketing system that is created by the 1940 Act, and particularly by § 22(d), the repeal of which has several times been urged

upon Congress with no success. It is an economic fact, recognized by Congress, that the two markets—the primary market described in Part III *supra,* and a secondary market as urged by the plaintiffs—cannot co-exist and both remain viable. Having established a resale price maintenance system in the primary distribution system in which ordinary competitive influences cannot operate, Congress has rejected all attempts to foster a secondary market which might operate to the detriment of the primary market.

In support of those conclusions we look to the legislative history of the key sections of the 1940 Act and to the congressional intent in enacting that legislation.

A. *Section 22(d)*

Section 22(d) provides in pertinent part,

> . . . no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus.

As written, and as applied, that language clearly contemplates a congressionally sanctioned retail price maintenance system which is inconsistent and in conflict with the antitrust laws so far as underwriters and dealers are concerned.

Plaintiffs assert, however, that since the term "broker" or "broker-dealer" is not used in the subsection, that 22(d) permits a person to sell to another through a broker at a price less than the specified public offering price for the same shares, and that the absence of a significant brokerage market in those shares implies the existence of conspiratorial anti-competitive activity on the part of defendants to prevent the growth of that market.

This argument, however, ignores the price maintenance purpose of § 22(d) and its corollary that there must not be price discrimination between similarly situated investors.

On this latter point, so far as this Court is aware, there is no SEC or SEC staff pronouncement which can be construed to sanction price discrimination between similarly situated investors. To the contrary the SEC has said:

> The purposes of the Section [22(d)] are to prevent discrimination among purchasers and to provide for orderly distribution of such shares by preventing their sale at a price less than that fixed in the prospectus. Investment Company Release No. 2798 (December 2, 1958). *See also* Investment Company Release Nos. 8816 (February 13, 1970); 2718 (May 29, 1958); 89 (March 13, 1940). *See In the Matter of Investors Diversified Service,* 39 SEC 680 (1960).

Again, in its most recent annual report the SEC has stated:

> Section 22(d) precludes the sale to public investors of redeemable investment company securities which are being currently offered to the public on or through an underwriter except at a current public offering price described in the prospectus. SEC, *Thirty-eighth Annual Report* 97.

Thus, the language of the statute, its legislative history and subsequent interpretation by the SEC all indicate that its object was to allow the pre-1940 method of mutual fund share distribution to continue subject to the changes necessary to suppress what was sometimes dubbed the "bootleg" market. Greene, *The Uniform Offering Price of Mutual Fund Shares Under the Investment Company Act of 1940,* 37 *U. Det. L.J.* 369, 371 (1960); *In the Matter of Spiro Sideris,* Securities Exchange Act Release No. 8816 (Feb. 13, 1970).

The legislative history of § 22 indicates that in the pre-1940 period there was in fact a secondary market in mutual fund shares, a market very similar in size and scope as that for which plaintiffs here attempt to make a case.[35] This

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[35] *Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. (1940); *Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce,* 76th Cong., 3d Sess. (1940); *S. Rep. No.* 1775, 76th Cong., 3d Sess. (1940); *H.R. Rep. No.* 2639, 76th Cong., 3d Sess. (1940); *Hearings on S. 1659 Before the Senate Comm. on Banking and Currency,* 90th Cong., 1st Sess. (1967); *Hearings on H.R. 9510 and H.R. 9511 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce,* 90th Cong., 1st Sess. (1967); *S. Rep. No.* 1351, 90th Cong., 2d Sess. (1968); *Hearings on S. 34 and S. 296 Before the Senate Comm. on Banking and Currency,* 91st Cong., 1st Sess. (1969); *Hearings on H.R. 11995, S. 2224, H.R. 13754 and H.R. 14737 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce,* 91st Cong., 1st Sess. (1969); *S. Rep. No.* 184, 91st Cong., 2d Sess. (1969); *H.R. Rep. No.* 1382, 91st Cong., 2d Sess. (1970); *H.R. Rep. No.* 1631, 91st Cong., 2d Sess. (1970).

market—the "bootleg market"—was being maintained by brokers and dealers who were not under contract with the issuers or underwriters and who were not, accordingly, a part of the established distribution system of any given fund.

Those non-contract broker-dealers, without the authority of fund underwriters and in competition with authorized retail distributors of mutual fund shares, were buying shares in the market directly from shareholders at a price slightly above the published redemption price and reselling them to investors at prices lower than those fixed by the funds' principal underwriters.[36] Contract dealers operating in the primary distribution system, on the other hand, were obligated by their distribution contracts to sell fund shares at the price (including the sales charge) set by the principal underwriters.

Thus, non-contract dealers were effectively by-passing the primary distribution system and retaining for themselves the selling commissions in full.[37] If investors bought in the secondary market but redeemed through the fund, it was feared that redemptions would exceed sales of new shares and the fund would no longer have the cash available to satisfy its redemption obligations. Thus if the proceeds of new sales did not accrue to the fund, forced liquidation might result.

The congressional response to the problems of the pre-1940 market conditions was § 22. By § 22(f), *infra*, a fund was given the right to limit transferability. By § 22(d), all dealers were required to maintain the public offering price in sales to the public. The effect of the Act was for the first time to bind non-contract dealers to the public offering price. A stated purpose of § 22(d) was to insure that "no securities issued by an investment company shall be sold to insiders or to anyone other than an underwriter or dealer except on the same terms as are offered to other investors."[38]

This was a clear recognition that cut-price competition

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[36] *Investment Trust Study of 1940*, 865; *see also Hearings on H.R. 9510 and 9511 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, 90th Cong., 1st Sess. 59 (1967) (hereinafter cited as *1967 House Hearings*).

[37] *Investment Trust Study of 1940*, 864; *Public Policy Report* 219.

[38] *1940 Senate Hearings* 1057.

resulted in discrimination between similarly situated investors.

"Another factor in the decision to give statutory sanction to price fixing in 1940 was the fact that mutual fund distribution was then and for many years thereafter conceived of as a specialized type of underwriting, and underwriting was regarded as a field in which the law sanctioned price fixing." *1967 Senate Hearings* 153-54 (Chairman Cohen). *Cf. United States v. Morgan*, 118 F. Supp. 621, 697 (S.D.N.Y. 1953).

As alluded to *supra*, a very real danger of the "bootleg" market was that its short term price advantage would drain profits from the primary distribution system and leave the issuers unable to engage in continuous sales of new securities necessary for long-term growth and the financial health of a fund.

According to one commentator, a purpose of the price maintenance provisions was "to prevent the cut-price competition which had then been making serious inroads upon the contractual distribution system of the mutual fund underwriting firms." Greene, *Uniform Offering Price*, *supra*, 37 *U. Det. L.J.* at 371.

Section 22(d) has been reconsidered by Congress several times. Its modification or repeal has been urged. Congress has consistently refused to modify or repeal it, and in the course of hearings on various proposals, the position of the SEC and the congressional intent are clearly reflected. For example, in 1967 Congress was re-examining the problems of public offering prices and sales loads. It was being urged that competition for sales loads could only be realized by a repeal of 22(d). While testifying before the Senate Committee, then-Chairman of the SEC Cohen remarked:

> However, this argument [that 22(d) be repealed to allow competition] overlooks a fundamental theme of state and federal securities regulation. Securities regulation has done a good deal for the knowledgable investors, principally by increasing the quantity and improving the quality of the information available to them. But one of its primary concerns has always been the welfare of the unsophisticated investor, who is often the one most likely but least able to bear the burden of high charges in a competitive market. If it is desirable for millions of

> unsophisticated investors of modest means to invest in securities through the medium of mutual funds, it is also desirable that they should not subsequently have cause to believe that they were unfairly dealt with. On balance, we concluded therefore that a modification of the manner in which sales charges on mutual fund shares are now regulated was more consonant with the spirit and purpose of the securities laws than the elimination of Section 22(d). We therefore recommended that sales charges be limited to 5% of the amount invested, with authority in the Commission to raise this limit in appropriate situations.[39]

It is significant to note, that in the same hearings, some participants recognized that brokerage transactions, necessarily executed in the secondary market, were within the prohibition of § 22(d).

Senator Proxmire, for example, asked whether or not the SEC would recommend the repeal of 22(d) "in order to permit price competition in the sale of the same mutual fund by various broker-dealers."[40] Senator Mondale stated that section "22(d) permits—indeed makes it illegal for *agents* to sell at a sales charge less than that prescribed by the company,"[41] while Professor Paul Samuelson, Massachusetts Institute of Technology, testified that "Congress should repeal the provision in section 22(d) of the Investment Company Act of 1940 which prohibits a *broker* from selling mutual fund shares to the public at less than the public offering price."[42] Later in the hearings, Senator Mondale again remarked that "Section 22(d) makes it illegal for an *agent* to charge less than his company says he must charge as an *agent's fee*, but it does not prohibit or have anything to do with competition as between companies."[43]

Similar statements appear in the House Hearings, including the following exchange between Congressman Watkins and then-SEC Chairman Cohen:[44]

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[39] *Hearings on S. 1659 Before the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 154-55 (1967) (hereinafter cited as *1967 Senate Hearings*).

[40] *Id.* 51-52.

[41] *Id.* 275 (emphasis added).

[42] *Id.* 348 (emphasis added).

[43] *Id.* 760 (emphasis added).

[44] *1967 House Hearings* 711.

> Mr. Cohen. The statute now, and since 1940, interferes with competitive business in this area.
> Mr. Watkins. Not to the extent you are proposing.
> Mr. Cohen. I am sorry, sir. The statute is unequivocal. No person, no matter where he got it, from the issuer, from another dealer, or even from a private person, no broker-dealer may sell a share of a particular fund at a price less than that fixed by the issuer.
>
> Mr. Watkins. True.

In the same House Hearings, the Department of Justice, while urging the repeal of 22(d), characterized its provisions as follows:

> It is true that Congress, in originally enacting the "fixed price" provisions of Section 22(d) in 1940, provided for the mutual fund industry an exception to the basic competitive requirements of the antitrust laws. In view of changed conditions, however, and the fact that the mutual funds are so important an outlet for the small investor, it would seem that he should not perhaps be deprived of the opportunity of purchasing his investment at a price arrived at through the free operation of competitive forces.[45]

The SEC took the same view. The then-Chairman Cohen stated that "sellers of mutual fund securities have been insulated by Federal Law from price competition at the retail level ever since 1940" (*1967 Senate Hearings* 26), and that § 22(d) "provides an exemption from the antitrust laws" (*1967 House Hearings* 140). Furthermore, the SEC's view that § 22(d) requires retail price maintenance by broker-dealers who are members of the primary distribution system is also evident in its acceptance of NASD Rule 26(e), which provides that "no member shall offer or sell any such security except at the effective public offering price described in the current prospectus of the issuing company. . . ." CCH NASD Manual ¶ 2176.

The same thread runs through hearings conducted in 1969,[46] again with a view to the modification or repeal of

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[45] *Id.* 21 (letter from Warren Christopher, Deputy Attorney General, to Chairman Harley O. Staggers, October 18, 1967).

[46] *Hearings on S. 34 and S. 296 Before the Senate Comm. on Banking and Currency*, 91st Cong., 1st Sess. (1969); *Hearings on H.R. 11995, S. 2224, H.R. 13754 and H.R. 14737 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 1st Sess. (1969).

§ 22(d). In the 1969 Senate report, we find these comments on § 22(d):

> The provision for "reasonable loads to investors" is intended to assure that the sales loads fixed by the principal underwriters (*which continue to be protected against price competition by Section 22(d) of the act*) will be established at levels which recognize the interests of investors.
>
> The provisions of this proposed section shall prevail over any conflicting provision of Federal law. This provision, *which is identical to Section 15A(n) of the Securities Exchange Act, is designed to make it clear that no other provision of Federal law, including the antitrust laws,* prevents a registered securities association from adopting rules consistent with, and necessary to effectuate, the purposes and provisions of this section. *S. Rep. No.* 184, 91st Cong., 1st Sess. 18 (1969) (emphasis added).
>
> The basic sales commission charged for mutual fund shares is in most instances about 8½ percent of the total payment or 9.3 percent of the amount invested. *This charge is protected by Section 22(d) of the Investment Company Act which provides for a unique scheme of retail price maintenance. Under this section, all dealers, regardless of the source of the shares they sell, are prohibited by law from cutting the sales charge fixed by the mutual fund underwriter. Price cutting in this field is a Federal crime.*
>
> In its deliberations your committee considered the possibility of deleting Section 22(d) from the act. However, impressive testimony was given that there had not been sufficient study of the consequences of such an amendment. Therefore, your committee requests the Securities and Exchange Commission to review the consequences of such a proposal on both the investing public and mutual fund sales organizations and report to it as soon as is reasonably practicable. *Id.* 7-8 (emphasis added).

It is thus conclusively established that competition in the sale of a single fund's shares is effectively precluded by the 1940 Act which was intended, via § 22(d), to prevent the sale of fund shares at a price less than that fixed in the current prospectus. It is obvious that Section 22(d) of the 1940 Act was premised upon a congressional understanding that principal underwriters and broker-dealers were exempt

from the antitrust laws when entering into uniform sales agreements for mutual fund shares. It is also obvious that even at the expense of a secondary market Congress intended to maintain the resale price maintenance system. Congressional intent is entitled to substantial weight lest this Court "change the design that Congress fashioned." *State Board of Insurance v. Todd Shipyards Corp.*, 370 U.S. 451, 458 (1962).

B. *Section 22(f)*

Section 22(f) is a necessary companion to § 22(d). If the problems of the competitive market created by non-contract brokers were to be met, restrictions on alienability were necessary. And Section 22(f) provides:

> No registered open-end company shall restrict the transferability or negotiability of any security of which it is the issuer except in conformity with the statements with respect thereto contained in its registration statement nor in contravention of such rules and regulations as the Commission may prescribe in the interests of the holders of all of the outstanding securities of such investment company.

Paraphrased, that language states clearly that if (1) restrictions on transferability or negotiability are included in the registration statement, and if (2) these restrictions are not in contravention of such rules and regulations as the commission may prescribe in the interest of the shareholders, then such restrictions are permissible even if they create departures from antitrust standards.

As noted above in the discussion of § 22(d), Congress considered the 1940 Act in the light of then-existing conditions, particularly the disruptive influence upon the market in mutual fund shares by the practices of non-contract dealers and brokers.

To overcome this disruptive competition prior to the enactment of the 1940 Act, some funds restricted the alienability of their shares, "providing substantially that the shares could only be sold or tendered for redemption to the open-end investment company."[47] Such restrictions were usually included in the share certificates.[48]

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[47] *Investment Trust Study of 1940*, 865.

[48] *1940 Senate Hearings*, 292 (remarks of SEC General Counsel David Schenker).

From and after 1940, § 22(f) required that any restriction on alienability be included in the registration statements and, additionally, that they be subject to the rule-making authority of the SEC. Clearly, by § 22(f) Congress specifically empowered mutual funds to restrict the transferability and negotiability of their shares, subject, of course, to disclosure in registration statements and to the rule-making authority of the SEC. Just as clearly Congress sanctioned such restrictions with full knowledge of their effect upon a secondary market which existed at the time and in full recognition of the antitrust implications.

Restrictions on alienability have consistently appeared in registration statements and in uniform sales agreements since the passage of the 1940 Act. Not only are such contracts required by SEC-approved Rule 26 of the NASD Rules of Fair Practice, CCH NASD Manual ¶ 2176, but they are also disclosed in the registration statements. It is undisputed that these agreements have remained virtually unchanged since they were first filed with the SEC along with and as part of the registration statements. It is also undisputed that the SEC has never challenged the validity of uniform sales agreements. Indeed, the SEC has noted that these agreements require a dealer "to place all orders with the principal underwriter and to refrain from any attempt to obtain shares from other sources." [49]

It is thus apparent that Congress designed §§ 22(d) and 22(f) to create and protect a primary distribution system which is repugnant to the antitrust laws and did so in complete recognition of the fact that the legislation would frustrate the growth of a free secondary market. That statutory scheme is "incompatible with the maintenance of (an) antitrust action." *Silver v. New York Stock Exchange*, 373 U.S. 341, 358 (1963).

Whether the mutual fund marketing structure mandated by Congress in 1940 should be eliminated or modified is an issue for Congress and the SEC, not the Judicial Branch, to hear and to decide. In fact, in urging its complaint upon

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[49] *SEC Staff Report on Repeal of § 22(d)* A-109. *See Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No.* 95, 88th Cong., 1st Sess. 98 (1963), wherein reference is made to the "fair trade arrangements established by the Act, the NASD rules and private sales agreements . . ."; Greene, *Uniform Offering Price, supra*, 37 *U. Det. L.J.* at 371-72.

the Court, one of the plaintiffs, *viz.*, the Department of Justice, seeks to accomplish indirectly what it has failed, so far, to achieve directly—the repeal or modification of § 22(d)—in hearings before both Congress [50] and the SEC.[51]

V

IMPLIED IMMUNITY

Even if a specific exemption granted by the Maloney Act were deemed to be inadequate to grant immunity from the impact of the antitrust laws, the defendants urge that the 1940 Act, particularly § 22 thereof, created a pervasive regulatory scheme which highlighted the Congressional intent to immunize the investment company industry from the impact of the antitrust laws.

The plaintiffs, on the other hand, urge that repeals of the antitrust laws by implication are "strongly disfavored, and have only been found in cases of plain repugnancy between the antitrust and regulatory provisions." They argue that, in the instant case, plain repugnancy is not apparent.

The most recent pronouncement of the Supreme Court on this particular point is to be found in *Hughes Tool Company v. Trans World Airlines*, 409 U.S. 363 (1973).

In *Hughes Tool* the respondent TWA challenged as violative of the antitrust laws certain transactions and activities of petitioner Hughes Tool (Hughes). The Supreme Court, dismissing the action, held that the challenged transactions "were under the control and surveillance of the Civil Aeronautics Board" (CAB); that pursuant to the Federal Aviation Act of 1968 the CAB applying antitrust standards has reviewed the same kind of conduct which TWA alleged to be violative of the antitrust laws. The Court stated:

> In this context, the authority of the Board to grant the power to "control" and to investigate and alter the manner in which that "control" is exercised leads us to conclude that this phase of CAB jurisdiction . . . pre-

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[50] *1967 House Hearings.*

[51] *In the Matter of Mutual Fund Distribution and the Potential Impact of a Repeal of Section 22(d) of the Investment Company Act of 1940*, SEC File No. 4-164 (1973).

empts the antitrust field. 409 U.S. at 385 (footnote omitted).

And the Court further stated that where

> the CAB authorizes control of an air carrier to be acquired by another person or corporation and where the CAB specifically authorizes as in the public interest specific transactions between the parent and the subsidiary, the way in which that control is exercised in those precise situations is under the surveillance of CAB, not in the hands of those who can invoke the sanctions of the antitrust laws. 409 U.S. at 387.

Further the Court said that its holding was "consistent with the view expressed in *Silver v. New York Stock Exchange* . . . that a statutory scheme that does not create a total exception from antitrust laws may, nonetheless, in particular and discrete instances *by implication* grant immunity from an antitrust claim." 409 U.S. at 385 n.14 (emphasis added).

The Court in *Hughes Tool* relied heavily on its prior decision in *Pan American World Airways v. United States*, 371 U.S. 296 (1963), which also involved the pervasive regulatory scheme of the CAB and an implied repeal of the antitrust laws. In *Pan American* the Court found that the Sherman Act could not be applied to matters which the CAB had approved in exercising its statutory function.

> It would be strange, indeed, if a division of territories or an allocation of routes which met the requirements of "public interests" as defined in § 2 were held to be antitrust violations. . . . If the courts were to intrude independently with their construction of the antitrust laws, two regimes might collide. 371 U.S. at 309-10.

The Court then found that the implementation of antitrust policy in the public interest was for the CAB, under the Federal Aviation Act's comprehensive regulatory scheme, and not for the courts. In the case at bar, as in *Hughes Tool* and *Pan American*, there exists a pervasive regulatory scheme coupled with a legislative history manifesting congressional intent to immunize the investment company industry from the operation of the antitrust laws to the limited extent necessary to carry out the purpose of the independently defined federal policy legislated in the

regulatory act, *i.e.*, the Investment Company and Maloney Acts.[52]

The decisions in *Hughes Tool* and *Pan American* are consistent with the views expressed in *Silver v. New York Stock Exchange, supra*, where the Supreme Court held that the Stock Exchange was not exempt from the antitrust laws when, pursuant to its rules, it ordered its members to remove certain telephone connections they had with the offices of a non-member. Although the Exchange was generally regulated by the Securities Exchange Act of 1934, the Court noted that the SEC lacked jurisdiction to review cases such as petitioner's where the Exchange has enforced its rules. *Silver v. New York Stock Exchange, supra*, 373 U.S. at 358.

The Court's opinion in *Silver* turned on the fact that there was no justification for the Exchange rule under the Securities Exchange Act because that rule did not provide any procedural safeguards for the petitioner. The Court did find, however, that "particular instances of exchange self-regulation which fall within the scope and purposes of the Securities Exchange Act may be regarded as justified in answer to the assertion of an antitrust claim." 373 U.S. at 361. The Court noted further that "(s)hould review of exchange self-regulation be provided through a vehicle other than the antitrust laws, a different case as to antitrust exemption would be presented. See note 12, *supra*." 373 U.S. at 360. The Court's reference, "note 12," refers expressly to the SEC's jurisdiction under the Maloney Act and states that were there such SEC jurisdiction in a *Silver*-

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[52] In Hecht v. Pro-Football, Inc., 144 U.S.App.D.C. 56, 444 F.2d 931 (1971), *cert. denied*, 404 U.S. 1047 (1972), the Court held the following to be relevant criteria for determining which conduct is immune from the antitrust laws:

> Putting the problem in this light, relevant criteria would include the specific language of the congressional statute involved, any legislative history which would throw light on the congressional intent, the relative importance of the governmental action which is asserted to override antitrust policy, whether the governmental agency is required to take into consideration the possible anticompetitive effect of its actions, whether the agency is required to adhere to a clearly defined and restricted statutory directive, and to what extent the agency's actions are subject to judicial review. 144 U.S.App.D.C. at 60, 444 F.2d at 935.

See also Thill Securities Corp. v. New York Stock Exchange, 433 F.2d 264, 270 (7th Cir. 1970), *cert. denied*, 401 U.S. 994 (1971), where the Court also discussed immunity criteria; United States v. Morgan, 118 F. Supp. 621 (S.D.N.Y. 1953).

type situation, "a different case would arise concerning exemption from the operation of laws designed to prevent anti-competitive activity . . ." 373 U.S. at 358 n.12.[53]

This Court is persuaded that the instant case is that "different case."[54] The Investment Company Act and the Maloney Act read together demonstrate that Congress intended to eliminate free competition in the distribution of mutual fund shares. The language of both acts clearly defines the pervasive statutory and administrative control over the area and manifests a congressional intent to leave this complex field to the supervision and control of an expert administrative agency.[55] The SEC and the NASD have the statutory authority to control the area and both have in fact taken an active role. The NASD, under the control and supervision of the SEC, has adopted specific rules to govern the activities of principal underwriters and broker-dealers. The Maloney Act, Section 15A(b)(8), specifically requires the SEC to employ antitrust standards, *i.e.*, "to protect the public interest," when reviewing the rules promulgated by the NASD.[56] Still further, the SEC has adopted rules

[53] *But see* Harwell v. Growth Programs, Inc., 451 F.2d 240 (5th Cir. 1971), *reh. denied*, 459 F.2d 461, *cert. denied*, 409 U.S. 876 (1972), where the Court applied the *Silver* rationale to self-regulatory activities of the NASD. *Harwell*, however, did not involve a claim of limited antitrust immunity under § 22 of the 1940 Act.

[54] *Cf.* Gordon v. New York Stock Exchange, Inc., *et al.*, Civil No. 71-1496 (S.D.N.Y., filed Dec. 4, 1973), where the Court, in dismissing an antitrust attack on the commission structure of both the New York and American Stock Exchanges, found that the fixing of commissions falls within the congressional policy of exchange self-regulation embodied in the Securities Exchange Act of 1934.

[55] In Baum v. Investors Diversified Services, Inc., 286 F. Supp. 914 (N.D. Ill. 1968), *aff'd on other grounds*, 409 F.2d 872 (7th Cir. 1969), the plaintiff alleged a violation of the Robinson-Patman Act. After reviewing the SEC involvement, the court held:

> The foregoing demonstrates that the SEC has exercised its broad regulatory authority in this industry to establish a framework of pricing practices within which investment companies must operate. It has specifically approved the alleged discriminatory pricing system under attack in the case at hand, and has justified the system as being "in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of this Title." 286 F. Supp. at 924.

[56] *See also* Section 6(c) of the 1940 Act which empowers the SEC to "exempt any person, security, or transaction . . . from any provision" of the Act "if and to the extent that such exemption is necessary or appropriate in the *public interest* and consistent with the protection of investors and the purposes fairly intended by the policy and provisions" of the Act. 15 U.S.C. § 80a-6(c) (emphasis added).

specifically designed to govern *non*-NASD members in the distribution and redemption of mutual fund shares. *See* 15 U.S.C. §§ 78o(b)(8)-(10). In connection with its regulatory function, the SEC has extensively reviewed the distribution and redemption practices in the investment company securities industry and even has reviewed the secondary market for such securities.[57]

This Court's opinion is further strengthened by the Supreme Court's decision last Term in *United States v. Cartwright*, 411 U.S. 546 (1973). That case challenged a regulation issued by the Secretary of the Treasury covering valuation of mutual fund shares for Federal Estate Tax purposes. The Court at least impliedly recognized the pervasive regulatory scheme in the investment company industry.

> Private trading in mutual fund shares is virtually nonexistent. Thus at any given time, under the statutory scheme created by the Investment Company Act, shares of any open-end mutual fund with a sales load are being sold at two distinct prices. Initial purchases by the public are made from the fund, at the "asked" price, which includes the load. But shareholders "sell" their shares back to the fund at the *statutorily* defined redemption or bid price. 411 U.S. at 549 (emphasis added).

The Court went on to state that the regulation in question was "manifestly inconsistent with the most elementary provisions of the Investment Company Act of 1940 and operates without regard for the market in mutual fund shares that the Act *created and regulates.*" 411 U.S. at 557 (emphasis added).

The plaintiffs place great reliance on other recent Supreme Court decisions. Principally they rely upon *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973), in which the Court refused to imply immunity from the antitrust laws. Plaintiffs cite *Otter Tail* to show that even ex-

[57] *See, e.g., Public Policy Report; SEC Staff Report on Repeal of § 22(d); In the Matter of Mutual Fund Distribution and the Potential Impact of a Repeal of Section 22(d) of the Investment Company Act of 1940*, SEC File No. 4-164 (1973).

tensive regulation of an industry does not thereby immunize that industry from the antitrust laws. The Court's language is clear and unequivocal, however, for it found congressional intent *not* to displace the antitrust laws, but rather to retain the applicability in order to promote competition. That is not the case here.

> It is clear, then, that *Congress rejected a pervasive regulatory scheme for controlling the interstate distribution of power in favor of voluntary commercial relationships. When these relationships are governed in the first instance by business judgment and regulatory coercion,* courts must be hesitant to conclude that Congress intended to override the fundamental national policies embodied in the antitrust laws. *See United States v. Radio Corporation of America, supra,* at 351. This is particularly true in this instance because Congress, in passing the Public Utility Holding Company Act, . . . was concerned with "restraint of free and independent competition" among public utility holding companies. See 15 U.S.C. § 79a(b)(2). 410 U.S. at 374 (emphasis added).

Otter Tail accordingly is not controlling.

Nor does *Federal Maritime Commission v. Seatrain Lines, Inc.,* 411 U.S. 726 (1973) support plaintiffs' position. That case dealt with the scope of an express repealer of the antitrust laws in the 1916 Shipping Act [58] which by its terms, limited antitrust immunity to conference agreements approved by the Federal Maritime Commission (FMC). At issue was whether an agreement which confers no ongoing obligations is an "agreement" within the meaning of the Act. The Court held that Congress did not intend to invest the FMC with the power to shield from antitrust liability mergers which create no continuing responsibilities. Furthermore, the Court found in examining the legislative history there was an overriding federal policy to promote competition. Since the FMC's power to immunize agreements from the antitrust laws was limited only to those agreements approved by it, this Court fails to see in what manner the claim for limited immunity in the present case

[58] 46 U.S.C. § 814. See Note, *The Shipping Industry Seeks a Safe Haven: Merger Jurisdiction for the FMC?,* 5 *Law & Pol. Int'l Bus.* 274 (1973).

offends the *Seatrain* principle since there is no similar requirement conditioning exemptions in the 1940 Act.[59]

This Court is not, of course, unmindful of the fact that "(r)epeals of the antitrust laws by implication from a regulatory statute are strongly disfavored, and have only been found in cases of plain repugnancy between the antitrust and regulatory provisions." *United States v. Philadelphia National Bank,* 374 U.S. 321, 350-51 (1963) (footnotes omitted). *See also United States v. McKesson & Robbins, Inc.,* 351 U.S. 305, 316 (1956); *California v. FPC,* 369 U.S. 482 (1962); *United States v. Borden Co.,* 308 U.S. 188 (1939). That principle, of course, rests upon the sound basis that "antitrust laws represent a fundamental national economic policy." *Carnation Co. v. Pacific Westbound Conference,* 383 U.S. 213, 218 (1966).[60] With that fundamental policy in mind, the Court does not hold that the Investment Company Act and the Maloney Act "completely displace the antitrust laws." *Hughes Tool, supra,* 409 U.S. at 389. What the Court does find is a "limited antitrust exemption." *Carnation Co., supra,* 383 U.S. at 219. Here, given the fact that Congress clearly intended to substitute a pervasive regulatory scheme, *i.e.,* § 22 of the 1940 Act, for the usual antitrust prohibitions in the narrow area of distribution and sale of mutual fund shares, it is clear that the price maintenance practices complained of are immune from ordinary antitrust strictures.[61]

[59] *Cf.* Ricci v. Chicago Mercantile Exchange, 409 U.S. 289, 302-03 n.13 (1973), where the Court recognized that where a regulatory act contains an express exemption from the operation of the antitrust laws, or where a regulatory agency is specifically directed to consider competitive factors in the exercise of its duties, it is necessary to conclude that Congress intended to exempt from the antitrust laws activity subject to the administrative agency's adjudicative or rule-making authority.

Moreover, the cases at bar do not involve the doctrine of primary jurisdiction. *See, e.g.,* Chicago Mercantile Exchange v. Deaktor, 42 U.S.L.W. 3330 (U.S. Dec. 3, 1973) (No. 241); Ricci v. Chicago Mercantile Exchange, *supra.*

[60] *See, e.g.,* United States v. Borden Co., 308 U.S. 188, 200 (1939). *Cf.* Maryland & Virginia Milk Producers Ass'n Inc. v. United States, 362 U.S. 458 (1960).

[61] Notwithstanding this conclusion, two SEC rulings, cited by plaintiffs in support of their contention that the price maintenance requirements of § 22(d) would not apply if the broker-dealer acted in the capacity of a broker rather than a dealer, deserve mention. One is an Opinion of SEC General Counsel, Investment Company Act Release No. 87 (March 14, 1941). In response to an abstract inquiry, the General Counsel thought that the term "dealer" in § 22(d)

VI

CONCLUSION

In light of the foregoing, the Court concludes that the plaintiffs in each of the above-captioned cases have failed to state a claim upon which relief can be granted, and that accordingly the motions to dismiss in each such case must be granted. Orders are filed herewith.

Dated: December 14, 1973

/s/ .....
JUDGE

Dated: December 14, 1973

"refers to the capacity in which a broker-dealer is acting in a particular transaction." He concluded that when a broker-dealer acts as a broker in a specific transaction, he is not bound to sell at the public offering price. In the Matter of Oxford Co., Inc., 21 SEC 681 (1946), involved a disciplinary proceeding for a broker-dealer alleged to have violated his fiduciary duty to his clients. There the broker-dealer sold mutual fund shares from one of his accounts to another related account, charging the public offering price and retaining the sales load for himself. The SEC, citing the General Counsel's opinion, rejected the technical defense that the subject's actions were mandated by § 22(d).

The Court concludes that reliance on these two decisions is misplaced. They are *ad hoc* decisions in no way related to the regulated distribution system. Furthermore, they do not address the problem of likely discrimination between similarly situated investors. Such shortcomings preclude a basis for allowing industry-wide cut-price competition in brokerage transactions contrary to the purposes of § 22(d).

(Title Omitted in Printing)

NOTICE IS HEREBY GIVEN that the United States of America, plaintiff herein, appeals to the Supreme Court of the United States from the judgment for defendants entered December 14, 1973.

This appeal is taken under the Expediting Act, 15 U.S.C., Sec. 29.

Dated at Washington, D. C., February 11, 1974.

/s/ Daniel R. Hunter
DANIEL R. HUNTER
Attorney for Plaintiff

(Certificate of Service Omitted in Printing)

SUPREME COURT OF THE UNITED STATES

No. 73-1701

UNITED STATES, *Appellant,*

v.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., *et al.*

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 15, 1974

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